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CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 30th August, 2022

No. 13/1/9887-HII(2)-2022/12751.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 119/2021 dated 25.07.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

MADHU SHARMA W/O SHRI ANINASH SHARMA, R/O PREVIOUS ADDRESS 2561, SECTOR 56, CHANDIGARH CURRENT ADDRESS, HOUSE NO. 215, GALI NO. 9, MANIMAJRA TOWN, CHANDIGARH, INDIA. (Workman)

AND

1. TCI FOUNDATION (AN ORGANIZATION OF TRANSPORT CORPORATION OF INDIA LIMITED) (THROUGH ITS OWNER/DIRECTORS/PROPRIETORS/MANAGER). ADDRESS LOCAL OFFICE: 98 VILLAGE DARIA, CHANDIGARH - 160101.
ADDRESS HEAD OFFICE: TCI HOUSE 69, INSTITUTIONAL AREA, SECTOR 32, GURGAON - 122207, HARYANA, INDIA.
2. CHANDIGARH STATE AIDS CONTROL SOCIETY, (THROUGH ITS CHAIRMAN/DIRECTOR/PROJECT DIRECTOR).
ADDRESS: INTERNATIONAL HOSTEL (NEAR CONGRESS BHAWAN), SECTOR 15A, MADHYA MARG, CHANDIGARH - 160015. (Management)

AWARD

1. Madhu Sharma, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that management No.1 is an establishment / organization and deals in facilitating Health Services, Education, Community and Sports Development. Management No.2 is a registered establishment / organization of U.T. Chandigarh Administration for implementing National AIDS Control Programme of Government of India. The workman was appointed by management No. 1 as Outreach Worker on 1st September, 2018 and was assigned work of HIV related counselling, testing and referral services. Targets outreach (traditional / face-to-

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face in the community and internet-based / virtual) to Truck Drivers or individuals living with HIV / AIDS and high-risk negative individuals and for HIV treatment, health information, education, referrals, risk reduction interventions, condom distribution and STD awareness, testing and treatment. Hence, the workman is a 'workman' defined under Section 2(s) of the ID Act. The daily timing of the workman was from 8:30 A.M. to 6:00 P.M. in summer and 8:30 A.M. to 5:30 P.M. in winter with weekly off. The work of the workman was controlled, supervised and assessed by the Project Manager of management No.1. The personal file, record of leaves etc. of the workman was maintained by Human Resource Department of management No. 1. The workman was being paid ₹ 6,694/- as net salary after deduction of provident fund and ESI. The work & conduct of the workman while in service was unblemished and satisfactory. No charge sheet was served to her. On 01.09.2020 the workman filed a demand notice before the Assistant Labour Commissioner, Labour Department, Chandigarh for not paying due salary of month of May and not paying salary according to the minimum wages notification of Labour Department, Chandigarh Administration. In the above mentioned demand notice, the workman mentioned that the management of employer is harassing or abusing her and also threatening to fire / terminate her because she raised the demand notice. On 09th September at 8:55 A.M. the workman marked her attendance and Mr. Vijay, Manager met her and said that they do not require her services any more. Hence, services of the workman were terminated abruptly and illegally without following any procedure of law. At that time, one demand notice of the workman was pending before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh for conciliation so there is clear cut violation of Section 33 of the ID Act. Hence, the managements illegally, arbitrarily and malafidely terminated the services of the workman, all of sudden, without following the mandatory procedure laid down under the provisions of the ID Act. The work on which the workman was deputed is still going on as the work is a regular work of the management. While terminating the services of the workman, the management has utterly violated the various provisions of the ID Act. Neither prior notice was issued to the workman nor the workman was paid wages in lieu of notice period. The workman had completed 240 days in the twelve calendar months preceding her termination. Previously the workman has submitted demand notice to managements and before the Assistant Labour Commissioner-cum-Conciliation Officer, Sector 30, Chandigarh. The Conciliation Officer initiated conciliation proceedings in the matter of the industrial dispute so raised by the workman but the conciliation proceedings failed and accordingly, the Conciliation Officer vide letter Memo No.1638 dated 22.07.2021 advised the workman to refer Section 2-A of the Industrial Disputes (Amendment) Act, 2010 and accordingly, this claim. Prayer is made that an order be issued to reinstate the services of the workman with continuity of service along with all the benefits the workman is entitled under the provisions of law including full back wages.

2. On notice, management No.1 appeared through its representative and contested the claim of the workman by filing written statement on, wherein preliminary objections are raised on the ground that the workman was working with answering management as outsource employee. The answering management is an NGO, which financially dependent on the Government grants received from time to time for the completion of various projects works as decided and intimated by the Government. The employees of answering management-organisation are to mark their presence online using their GPS, which is recorded by the Head Office and salary is calculated accordingly. Madhu Sharma did not join her duty regularly so her salary was calculated accordingly and was paid to her. Even the salary for the month of June & July has already been released to her. The answering management had issued the office order dated 18.05.2020 clarifying the employees that no grants have been received by the organization, therefore the services of all the employees would be treated as voluntary, which was also acknowledged by her. Madhu Sharma did not accept the fresh agreement for continuity of contract after receipt of grant from the Government therefore deems to have resigned from job with effect from August 2020 but she has concealed all the facts from the authorities keeping them in dark & tried to take advantage of her lies. The workman had filed the first complaint before the Labour Inspector on 13.08.2020 claiming total amount of ₹ 21,057/- being pending wages, which stood paid to

her. Afterwards she has filed other such number of complaints one after another, which are being replied by the answering management. Second time the similar complaint has been raised by the complainant Madhu Sharma.

3. In parawise reply it is averred that Madhu Sharma was working with answering management as outsource employee. The workman did not join her duty regularly so her salary was calculated accordingly and was paid to her. Even the salary for the month of June & July has already been released to her. The workman's first complaint before the Labour Inspector was given on 13.08.2020 claiming total amount of ₹ 21,057/- being pending wages, which stood paid to her. The demand notice issued by the workman was replied on 22.09.2020. Once the contractual work was completed the workman had to execute fresh agreement and the principle of 240 days does not apply here. Averments made in preliminary objections were reiterated. Averments para No.1, 4, 5, 6, 8 to 12 were denied. Prayer is made that the present claim be dismissed.

4. On notice, management No.2 appeared through its representative and contested the claim of the workman by filing written statement that Chandigarh State AIDS Control Society, Chandigarh is register under Act XXI of 1860 in the office of the Registrar of Firms & Societies, UT Chandigarh vide No.2762 dated 15th May, 1998. Chandigarh State AIDS Control Society (CSACS) is implementing National AIDS Control Programme. NACP is a 100% centrally sponsored project. The Secretary Health, UT Chandigarh is the Chairman of the society. Project Director is the technical head assisted by Deputy Directors, Assistant Directors, other officers and supporting staff. Chandigarh State AIDS Control Society release the grant-in-aid to the NGO Transport Corporation of India Foundation (TCIF) for implementation of TI Projects among migrants as per guidelines under National AIDS Control Programme (NACP). The administrative control of the project lies with the Chief Functionaries of NGO TCIF. NGO TCIF is a self-governing body which has its own bye-laws and rules and regulations which specify the manner in which the NGO is to regulate its conduct. The control of Chandigarh SACS over administrative powers of NGO is Nil. All the staff under TI programme is recruited and governed by NGO TCIF. The applicant-workman is not employee of Chandigarh State AIDS Control Society so reply of para 4 to 13 does not pertains to Chandigarh SACS.

4. During the pendency of the present industrial dispute on 06.07.2022 the workman moved an application seeking to withdraw the claim application. On 06.07.2022 the workman along with her representative made a statement, which was recorded separately and reproduced as below :—

"Stated that self attested copy of my Aadhar Card is Mark A. I have effected compromise with the respondents/management No. 1 & 2. As per compromise management No.1 has issued Cheque No. 810980 dated 05.07.2022 for sum of Rs. 40000/-(Forty Thousand only) drawn on State Bank of India, Branch Sector-31, Gurgaon, Haryana (copy of cheque is Mark-B), which is already received by me. Therefore, I do not intended to proceed further with the present application under Section 2A(2) of the Industrial Disputes Act, 1947 and withdraw the same being compromised."

5. Heard. In view of the aforesaid statement, the present industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

(Sd.). . .,

The 25th July, 2022.

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 30th August, 2022

No. 13/1/9888-HII(2)-2022/12753.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 48/2017 dated 26.07.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

AMRIT PAL SINGH S/O SHRI NACHHATAR SINGH, R/O VILLAGE RADIALA, TEHSIL KHARAR, DISTRICT MOHALI, PUNJAB SINCE DECEASED THROUGH HIS LEGAL HEIRS:

1. JASVIR KAUR -WIFE, AGED 45 YEARS
2. HARPREET KAUR - DAUGHTER, AGED 26 YEARS
3. MANPREET KAUR - DAUGHTER, AGED 25 YEARS
4. RAJWINDER KAUR - DAUGHTER, AGED 23 YEARS
5. GAGANDEEP SINGH - SON, AGED 20 YEARS
6. JARNAIL KAUR - MOTHER, AGED 72 YEARS. (Workman)

AND

1. DIRECTOR, SPORTS DEPARTMENT, UT, HOCKEY STADIUM, SECTOR 42, CHANDIGARH
2. GUARDIAN SECURITY AND PLACEMENT SERVICES, THROUGH ITS AUTHORISED SIGNATORY, SCO NO. 114, FIRST FLOOR, SECTOR 47C, CHANDIGARH.
3. SECURE GUARD, INDUSTRIAL PLOT NO. 151, INDUSTRIAL AREA, PHASE - II, CHANDIGARH THROUGH ITS AUTHORISED REPRESENTATIVE. (Management)

AWARD

1. In the industrial dispute received in this Tribunal / Court under Section 2-A(2) of the Industrial Disputes Act, 1947 as amended Act, 2010 (*hereinafter in short called 'ID Act'*) filed by the workman, it is submitted that the workman was appointed by management No. 1 as Security Guard on 25.09.2008 and remained as Security Guard with the management till 22.06.2017, he was paid on DC rates and his last pay was ₹ 17,690/- per month, after deducting PF and ESI, he was paid net ₹ 15,257/- per month. The workman has not been paid increased DC rates from April 2017 to June, 2017 for which the separate application / petition under payment of wages Act is being filed. The services of the workman were terminated on the illegal recommendations of concerned Manager of management No.1 *vide* verbal order with effect from 23.06.2017. Fresh persons in place of workman has been appointed and no principle of 'first come last go' has been adopted by the managements. Hence, the termination is illegal and against the provisions of the ID Act. Junior to the workman has been retained in service whereas the services of the workman has been illegally terminated *vide* verbal order on 23.06.2017. The managements have violated the provisions of Section 25-G, 25-H & 25-F of the ID Act and the services of the workman has been terminated without following the above provisions of the ID Act. Before illegally terminating the services of the workman, no notice, charge sheet has ever been served upon him and no inquiry has been conducted against the workman. Hence, the action of terminating the services *vide* verbal order is illegal and against the law. The Union of Sports Department, U.T. Chandigarh including employees of contractor has served a demand notice upon the managements. The managements instead of considering the demands of the union has illegally terminated the services of the workman on

23.06.2017. After illegal termination of the services of workman, *vide* verbal order dated 23.06.2017 the workman served a legal demand notice under Section 2-A of the ID Act upon the managements and the Conciliation Officer-cum-Assistant Labour Commissioner, U.T. Chandigarh conducting conciliation proceedings. On 11.07.2017 it was held by Assistant Labour Commissioner, U.T. Chandigarh that no amicable settlement could be made possible within stipulated period for conciliation of disputes and thus the conciliation proceedings stands closed at his level and advised the party concerned to take action as per Section 2-A of the ID Act as deemed fit. Hence, this claim. The workman is not gainfully employed anywhere from the date of illegal termination of services i.e. 23.06.2017 till date. The workman visited many times to the managements for his reinstatement of service but all in vain. The managements had adopted wrong procedure to remove old workmen and at their place appointed fresh workmen to deprive old workmen from their legal right. The similar procedure has been adopted in case of the workman. The management has not conducted inquiry or served notice or paid compensation in lieu of notice to the workman, hence, the management has violated the provisions of Section 25-F, 25-G & 25-H of the ID Act. Due to illegal termination order, the family of the workman has badly disturbed financially and mentally. The workman had completed more than 240 days continuously in a year so termination order is illegal. Neither the principal employer i.e. management No.1 is registered with the Labour Department for outsourcing the services of Security Guard nor the contractor-management No. 2 has obtained license for engaging the outsource labour from the Labour Department, Union Territory Chandigarh, hence, action of termination of services of the workman is illegal and against the provisions of the ID Act and provisions of Abolition of Contract Labour Act. The cause of action accrued to the workman on 23.06.2017 when his services were verbally terminated and thereafter on 11.07.2017 when the conciliation proceedings were closed by the Assistant Labour Commissioner and intimated to the workman *vide* Memo No. 3097 dated 17.07.2017 regarding closing of conciliation proceedings. The cause of action is still continuing one.

2. No such or similar proceedings are pending before any court of law, except the present one. Prayer is made that the workman may be reinstated into service with continuity in service and full back wages and all other consequential benefits from time to time.

3. On notice, management No.1 appeared through Law Officer and contested the case of the workman by filing written statement on 29.01.2018 wherein it is stated that the services of management No. 2 were hired by the answering management No. 1 for providing manpower. The workman was engaged by management No. 2 and not by management No. 1 as alleged in the statement of claim. It was management No.2 who appointed the workman and deputed in the office of answering management. As regards payment of wages as revised DC rates for the period with effect from April 2017 to June 2017, the Sports Department had already paid ₹ 59,001/-. As per bill submitted by management No. 2 on account of revised wages to the workman in the month of August, 2017. In fact, the services of the management No. 2 were hired by the answering management and the said workman was engaged by the management No. 2 and not the management No.1. The workman was replaced by the management No. 2 and the answering management / department has no concern with the termination of workman as alleged. The workman is employee of management No.2 for all intents and purposes. The workman has been removed / replaced by management No. 2. It is the matter between the workman and the service provider and the answering management / department has no concern with the removal / replacement of the workman. The workman was deputed through outsource service provider i.e. management No. 2. The answering management has no relation with the workman as he is appointed through outsource. The workman has no relation with the answering management / department as his services were provided by the management No. 2, to whom the contract for providing the manpower was awarded by the answering management. Therefore, the question does not arise of illegal termination, issue of notice, charge sheet and conducting of inquiry by the answering management against the workman. The services of workman were replaced by the management No. 2. The answering management is not responsible for the removal of the workman as he was not employee of the answering management. The answering management / department

is registered with the Labour Department under the Contract Labour Act, 1970. The present service provider has also obtained the labour license from the labour department. It is stated that the facts relating to termination of services of the workman vide verbal order dated 23.06.2017, issue of legal demand notice under Section 2-A of the ID Act upon the managements and the conciliation officer-cum-Assistant Labour Commissioner, U.T. Chandigarh, conducting of conciliation proceedings by the Assistant Labour Commissioner, U.T. Chandigarh and further the fact the conciliation proceedings stand closed are matter of record. Rest of the contents of the statement of claim are denied as wrong except para 15 which is denied for want of knowledge and prayer is made that the claim petition may be dismissed against the answering management.

4. Upon notice, management No.2 appeared through its representative Shri D. P. Sharma. Management No.2 contested the claim petition by filing separate written statement dated 21.12.2017, wherein preliminary objections were taken up on the grounds that the services of the workman have never been terminated, as alleged. The factual position remains that the concerned workman was found sleeping while on duty on 20.06.2017, for which he admitted his fault and assured not to repeat similar action of omission in future and also requested to be excused. He was advised to visit office of the management in Sector 47-C, Chandigarh on 21.06.2017 for counselling etc. He admitted his omission *vide* letter dated 21.06.2017 and he was advised to visit our office again on 23.06.2017 for issuing him fresh deployment order with one of our other clients but neither he visited their office nor reported for duty and, as such, he has been absenting himself from duty without any intimation with effect from 23.06.2017. Hence, the allegation of termination is wrong, false and baseless. The present reference and claim statement is bad in law, thus, not maintainable. The same deserves to be dismissed.

5. Further, on merits, it is admitted as correct that the workman was appointed as Security Guard and remained as Security Guard with management No.1 till 22.06.2017. The workman was paid DC rates and his last pay was ₹ 17,690/- per month, after deducting PF and ESI, he was paid net ₹15,257/- per month. It is stated that the answering management No. 2 is engaged in the business of outsourcing manpower to various clients i.e. private and Government establishments situated in the Union Territory Chandigarh and in the State of Punjab. Management No.1 i.e. Director Sports Department, U.T. Chandigarh is one of such clients. The contract labour so supplied by them in the Government establishments gets wages as per the DC rates and in the private establishments the contract labour gets wages as notified by the appropriate Government / Labour Department of the concerned state under the Minimum Wages Act, 1948. In the present case the management No. 1 is the principal employer and the answering management No. 2 is the contractor. The workman concerned was deployed to work as Security Guard by the answering management No.2 with the management No.1. The management No.1 being a Government department is covered by the DC rates payable to the contract labour. The revised DC rates with effect from April 2017 were to be implemented by the management No.1 and thereafter the same were to be released to the answering management No. 2. The revised DC rates have now been paid to the workman against the claim application under the Payment of Wages Act. It is denied that the services of the workman were terminated *vide* verbal order with effect from 23.06.2017. In fact, the workman himself stopped attending to his duty with effect from 23.06.2017 without any intimation. The workman had to visit their office on 23.06.2017 but neither he visited their office nor reported for duty. He was working as a Security Guard. Due to his sudden unauthorised absence, his duty was to be performed by someone else. Therefore, there was no other option left with them but to depute other staff in place of the workman. In any case, if the concerned workman is still ready to work with them, he should be directed to visit their office in Sector 47-C, Chandigarh immediately so that he can be deputed to work with one of their other client having establishment in Chandigarh or Mohali. These clients are governed by the Minimum Wages Act, 1948 and the contract labour deployed by the answering management No. 2 with them are paid minimum rates of wages notified by the appropriate Government / Labour Department from time to time. Section 25-F, 25-G & 25-H of the ID Act are not attracted in the present case. Since the workman himself remained away from the work, no charge sheet was required to be issued nor any inquiry was required

to be conducted. The management No.1 being the principal employer and the management No. 2 being the contractor for the management No.1 are duly registered under the Contract Labour (Regulation & Abolition) Act, 1970 (*hereinafter in short called as 'CLRA Act'*). The workman has no cause of action. Rest of the contents of the statement of claim are denied as wrong. Additional submission is made to the effect that if the workman so desires he can visit their office in Sector 47-C, Chandigarh immediately so that he could be deployed as Security Guard with one of their other clients having establishment in Chandigarh or at Mohali. These private establishments are not covered by the DC rates but are governed by the notification issued by the State Government under the Minimum Wages Act, 1948. Prayer is made that the reference may be declined with cost.

6. On notice, management No.3 appeared through representative Shri R. L. Manchanda and contested the statement of claim by filing written statement on dated 05.01.2021 wherein preliminary objections are raised on the grounds that the workman had served demand notices under Section 2-A of the ID Act to the managements No.1 & 2 because he had master servant relation with the said parties. The workman had no employee-employer relations with the management No. 3, hence, no dispute can be made *qua* M/s Secure Guard Security & Manpower Services. The managements No.1 & 2 have contested the demand notice before the Assistant Labour Commissioner, Chandigarh and no compromise / conciliation have been arrived, then the appropriate Government had referred the matter for adjudication to this Hon'ble Court. During the stage of evidence of the parties, the workman has wrongly impleaded the answering management as party to the dispute. The managements No.1 & 2 could not have given their respective consents to midway implead the management No. 3 in the present industrial dispute when the workman for no stretch of imagination had ever maintained master-servant relation with the management No. 3. Hence, the present claim of workman has no bearing *qua* management No.3 and the same needs to be dismissed with cost.

7. Further on merits, similar stand is taken as taken in the preliminary objection. It is stated that averments made in para 1 to 14 of the statement of claim does not pertain to the answering management No. 3 hence, needs no reply. Prayer is made that the involvement / identity of management No. 3 in the present industrial dispute reference may be dropped at the outset with heavy costs, in the interest of natural justice, equity and fair play.

8. The workman filed separate replications to the written statement of management No. 1 to 3 wherein the contents of written statements are denied as wrong except admitted facts of the claim statement and averments of the claim statement are reiterated. In the replication to the written statement of management No. 2, additional plea is taken that written statement is neither verified nor supported by any affidavit. Even no resolution of the company in favour of the authorised signatory has been attached with the written statement, therefore, the same cannot be read as defence on behalf of management No.2 and the defence of management No. 2 may be struck off on this ground.

9. From the pleadings of the parties, following issues were framed by vide order 26.02.2018:-

1. Whether there is no employer-employee relationship between management No. 1 and workman ? OPM-1
2. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
3. Relief.

10. In evidence the workman Amrit Pal Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents i.e. photocopy of his identity card bearing date of issue 07.04.2010, issued by Ascenture Management Service Private Limited *vide* Exhibit 'W1'; photocopy of Employees' State Insurance Corporation bearing insurance No.1710562864 relating to Amrit Pal Singh *vide* Exhibit 'W2'; photocopy of bank account passbook of Amrit Pal Singh bearing account No. 604601011001499

maintained with Vijaya Bank *vide* Exhibit 'W3'; photocopy of aadhar card of Amrit Pal Singh Exhibit 'W4'; photocopy of Amrit Pal Singh identity card bearing date of issue 01.01.2014, issued by Guardian Security Exhibit 'W5', photocopy of Employees' State Insurance Corporation bearing insurance No.10562864 Exhibit 'W6' and photocopy of passbook of saving bank account No. 33542332785 maintained with State Bank of India, Kharar, District Mohali *vide* Exhibit 'W7'. The workman closed his evidence on 07.08.2019.

11. On the other hand, managements examined MW1 Arun Kumar, Clerk, office of the Assistant Labour Commissioner, Union Territory Chandigarh and tendered documents i.e. the copy of demand notice dated 27.06.2017 issued by Amrit Pal Singh to the Director Sports Department, U.T., Hockey Stadium, Sector 42, Chandigarh and Guardian Security & Placement Services through its authorised signatory, Sector 47-C, Chandigarh relating to subject of demand notice against illegal termination order dated 23.06.2017 of Amrit Pal Singh, Security Guard *vide* Exhibit 'M1'; copy of proceedings dated 11.07.2017 in ID No.119/2017 *vide* Exhibit 'M2'; and a copy of failure report dated 17.07.2017 of Assistant Labour Commissioner-cum-Conciliation Officer relating to demand notice of Amrit Pal *vide* Exhibit 'M3'. On 04.11.2019 learned representative for management No. 2 place on record copy of termination of contract dated 08.03.2019 between M/s Guardian Security & Placement Services (management No. 2) and Director Sports Department, Chandigarh, Mark 'MX-2/1'.

12. *Vide* order dated 25.02.2020 M/s Secure Guard was impleaded as management No. 3. After taking written statement from management No.3 and replication to the written statement of management No. 3, *vide* order dated 17.02.2021 issues were reframed as below :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether there is no employer-employee relationship between management No.1 & 3 and workman ? OPM-1 & 3
3. Relief.

13. During the pendency of the present industrial dispute, the workman expired on 21.10.2020 and application dated 15.02.2021 for impleading legal heirs of the workman Late Amrit Pal Singh was filed on 17.02.2021. Learned representative for the workman made the statement, recorded separately, to the effect that he has no objection if the application dated 15.02.2021 for impleading legal heirs is allowed. Whereas learned Law Officer for management No.1 and learned representative for management No.3 stated at bar that they did not want to file reply to the application and have no objection, if the application filed for impleading the legal heirs of the deceased workman is allowed. Accordingly, application dated 15.02.2021 filed on 17.02.2021 for impleading legal heirs of the workman Late Amrit Pal Singh as parties is allowed and the legal heirs, as mentioned in the application, are ordered to be impleaded as legal heirs of the deceased workman.

14. On 11.08.2021 learned representative for the workman closed evidence of the workman.

15. Managements further MW1 H. S. Chahal - Managing Director, Guardian Security & Placement Service, Sector 47-C, Chandigarh (due to inadvertence witness has been marked MW1), who tendered his affidavit Exhibit 'MW1/A' along with photocopy of letter bearing Memo No.CL/2019/933 dated 12.02.2019 relating to the subject of renewal of contract labour license for the year 2019 addressed from Licensing Officer (under the Contract Labour (R&A) Act) UT Chandigarh to M/s Guardian Security & Placement Services, Sector 47-C, Chandigarh *vide* which their license bearing No.CL/UT/CHD/715 dated 03.08.2017 renewed up to 31.12.2019 was sent accompanied with photocopy of license No.CL/UT/CHD/715 dated 03.08.2017 granted to M/s Guardian Security & Placement Service, Sector 47-C, Chandigarh for the period up to 31.12.2017 bearing endorsement made by Licensing Officer (Contract Labour, U.T. Chandigarh) of renewal from 01.01.2018 to 31.12.2018 and then from 01.01.2019 to 31.12.2019 *vide* Exhibit 'MW1/1'.

16. The managements examined MW2 R. L. Manchanda - Manager (Legal), Secure Guard Security & Manpower Service, plot No.151, Phase - II, Industrial Area, Chandigarh who tendered his affidavit Exhibit 'MW2/A' along with photocopy of letter bearing Memo No.DS-UT/Estt.-2021/3581 dated 21.06.2021 relating to the subject of extension for award of contract for providing of security and allied staff services on outsource basis addressed from the Assistant Controller (F&A), Director Sports, Chandigarh Administration to M/s Security Guard Security & Manpower Services, 151, Industrial Area, Phase - II, Chandigarh vide Exhibit 'MW2/1'.

17. The managements examined MW3 Krishan Lal - Senior Judo Coach, Sports Department, Sector 42, Chandigarh Administration, who tendered his affidavit Exhibit 'MW3/A' along with authority letter dated 01.01.2021 issued in his favour by the Director Sports, Chandigarh Administration, authorising him to attend the court on 05.01.2021 to submit affidavit on behalf of the Sports Department, U.T. Chandigarh for evidence / witness vide Exhibit 'MW3/1'.

18. In cross-examination of MW1 H. S. Chahal, learned representative for the workman brought into evidence the document i.e. apology letter of Amrit Pal Singh dated 21.06.2017 Exhibit 'MX1'. On 02.03.2022 Law Officer for the management No.1 closed the evidence on behalf of management No.1. On 02.09.2021 representative for management No. 2 closed the evidence on behalf of management No. 2. On 02.09.2021 representative for management No. 3 closed the evidence of management No.3.

19. I have heard arguments of learned representatives for the parties and Law Officer for management No.1 and perused the judicial file. My issue-wise findings on the issues reframed *vide* order dated 17.02.2021 are as below :—

Issue No. 1 & 2 :—

20. Onus to prove issue No.1 is on the workman and onus to prove issue No. 2 is on management No. 1 & 3. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

21. To prove its claim, the workman Amrit Pal Singh examined himself as AW1 and *vide* his affidavit Exhibit 'AW1/A' deposed the averments of claim in toto. AW1 supported his oral version with documents Exhibit 'W1' to 'W7'.

22. On the other hand, learned Law Officer for management No.1 referred the testimony of MW3 Krishan Lal vide his affidavit Exhibit 'MW3/A' deposed that he is working as Senior Judo Coach in the Sports Department, Chandigarh Administration and authorised to appear on this Hon'ble Court to give evidence vide authority letter Exhibit 'MW3/1'. MW2 deposed that the services of management No.2 were hired by the answering management for providing manpower and the said workmen was engaged by management No.2, who appointed the workmen and deputed in the office of answering management. The workman was replaced by the management No.2 and the Sports Department has no concern with the termination of workman as the workman is employee of management No.2 for all intents and purposes. Therefore, it is a matter between the workman and the services provider, as such the Sports Departments has no concern with the removal / replacement of the workman. The workman was deputed through outsource service provider i.e. management No. 2. The answering management has no relation with the workman as he is appointed through outsource i.e. management No.2, to whom contract for providing manpower was awarded by the answering management. Therefore, question does not arise of illegal termination, issue of notice, charge sheet and conducting of inquiry by the answering management against the workman. As regards payment of wages as per revised DC rate, for the period from April 2017 to June 2017, the Sports Department has already paid ₹ 59,001/- as per bill submitted by management No. 2 on account of revised wages to the workmen in the month of August 2017. MW2 further deposed that the Sports Department is registered with the Labour Department under the CLRA

Act. The present service provider has also obtained the labour license from the Labour Department. The workman is not entitled for any relief claimed by him in his present claim.

23. Learned representative for management No.2 referred the testimony of MW1 Arun Kumar, Clerk, Office of Labour Commissioner, U.T. Chandigarh, who deposed that he is a summoned witness and has brought the summoned record pertaining to reference under Section 2-A of the ID Act with regard to workman Amrit Pal Singh. MW1 proved on record Exhibit 'M1' to 'M3'.

24. Learned representative for management No. 2 further referred to the testimony of MW1 H. S. Chahal, Managing Director, Guardian Security & Placement Services, Sector 47-C, Chandigarh who vide his affidavit Exhibit 'MW1/A' deposed that he is conversant with the facts of the present case. Their contract with the management No.1 has already ended up and terminated with effect from 16.03.2019 vide contract of termination letter dated 08.03.2019 by management No. 1, copy of which is Mark 'MX2/1'. Written comments to the demand notice of the workman were filed before the Conciliation Officer and through additional submissions the workman was given the offer of deployment as security Guard with one of their other client in Chandigarh or at Mohali but the workman had declined the offer. Similar offer was made to the workman through the Assistant Labour Commissioner, Chandigarh, and the same was declined by the workman which can be seen from the conciliation proceedings dated 30.06.2017 Exhibit 'M2'. Similar offer was given to the workman in the written statement filed in response to his statement of claim, which offer was also declined. During cross-examination the workman stated that he is not ready to work with any client of management No. 2 except Sports Department because it would be far away from his home and he might not be able to meet his family expenses. MW3 further deposed that the workman was found sleeping on duty on 20.06.2017 and he admitted his fault vide writing dated 21.06.2017 Exhibit 'MX1'. The workman was advised to visit their office on 23.06.2017 for his fresh deployment with their other clients but neither he visited their office nor reported for duty and remained absent with effect from 23.06.2017. The workman in his cross-examination has stated that his services were terminated by management No.1. Since the workman remained absent without intimation and other staff was deployed as the assignment of Security Guard cannot be left unattended. The workman himself remained absent and did not visit their office for fresh deployment, thus, no charge sheet or inquiry was necessitated. The management No.1 is the principal employer and the management No. 2 was the contractor in respect of the workman. Management No. 2 was registered under the CLRA Act, copy of license is Exhibit 'MW1/1'. The contract of management No. 2 has already been terminated by management No. 1 with effect from 16.03.2019, therefore the workman is not entitled to any relief whatsoever from management No. 2.

25. Learned representative for management No.3 referred testimony of MW2 R. L. Manchanda, who vide his Exhibit 'MW2/A' deposed that for the sake of brevity, the contents of his written statement may be read part and parcel of his affidavit. It is specifically deposed that presently the services contractor of the client is not with the agency of deponent as the same has come to an end with effect from 15.06.2021 and the workman has been allotted to some other service provider vide letter No. DS-UT-Esstt.-2021/3581 dated 21.06.2021 issued by the client. It is totally beyond the control of the agency of the deponent to make any submission, to extend any help to any of the contractually deployed staff with the then client of the defendant.

26. As far as relationship of employer-employee between management No.1 & 3 on one side and the workman other side is concerned, the workman / AW1 in his cross-examination conducted by management No.1 has stated that he was engaged by the contractor Ascenture Management on 25.09.2008. Thereafter on 11.12.2013 he was appointed by the management No.2 (Guardian Security). He has not made Ascenture Management as party in the present reference. AW1 admitted as correct that his work & conduct was observed by the contractor then the workman was taken by the Sports Department i.e. management No.1. AW1 when put to cross-examination by management No.2 stated that he was deployed as Security Guard in the Sports Department by M/s Guardian Security i.e. management No. 2. He was deployed by another contractor

namely Ascenture Management. When the contract with the Ascenture Management was ended with the management No.1, the contract was given to management No. 2 and he was put on the rolls of management No. 2. AW1 admitted as correct that the contract with the management No.2 has already been ended up with the management No.1 in March, 2019 and in its place M/s Secure Guard Agency has taken over. It is pertinent to mention here that initially the workman filed statement of claim against management No. 1 i.e. Director Sports Department, U.T., Hockey Stadium, Sector 42, Chandigarh and management No. 2 i.e. Guardian Security & Placement Services through its authorised signatory Sector 47-C, Chandigarh. On 20.12.2019 the workman filed an application to implead M/s Secure Guard as management No. 3. On 04.02.2020 learned representative for management No.2 by making endorsement on the application pleaded no objection if the application for impleading M/s Secure Guard is allowed. On 25.02.2020 learned Law Officer for management No.1 pleaded no objection if the application for impleading M/s Secure Guard, Industrial Plot No.151, Industrial Area, Phase II, Chandigarh as management No. 3 is allowed. Vide order dated 25.02.2020 M/s Secure Guard, Industrial Plot No.151, Industrial Area, Phase II, Chandigarh was ordered to be impleaded as management No. 3. On 25.02.2020 amended title was filed. Besides, from the workman's own document i.e. Exhibit 'W1' it is established that the workman Amrit Pal Singh designation Security Guard was engaged by Ascenture Management Services Private Limited. Exhibit 'W1' is the identity card of Amrit Pal Singh issued on 25.09.2008 mentioning his place of posting as Chandigarh and the said identity card was issued by the authorised signatory of Ascenture Management Services Private Limited. In the present case the workman did not plead that Ascenture Management Services Private Limited was not licensed contractor. From Exhibit 'W6' it is proved that the workman Amrit Pal Singh was allotted insurance No.10562864 under the Employees' State Insurance Corporation. Exhibit 'W6' incorporates the date of appointment of Amrit Pal Singh as 25.09.2008. Further AW1 in his cross-examination conducted by management No.2 admitted as correct that he used to receive his wages from the management No.2 and the same was transferred every month in his bank account. AW1 admitted as correct that he was covered under the EPF and ESI scheme. AW1 admitted as correct that every month contribution towards EPF and ESI was deducted from the salary by his employer i.e. management No. 2 and thereafter the amount of his salary was transferred in his bank account. AW1 admitted as correct that management No.1 was the principal employer and the management No. 2 was the contractor. From the aforesaid of version of AW1 it is duly established on record that initially the workman was appointed on 25.09.2008 by the principal employer i.e. management No.1 through contractor Ascenture Management and after the contract of management No.1 ended with the Ascenture Management, then on 11.12.2013 the workman was appointed by the contractor Guardian Security & Placement Services i.e. management No. 2. Above all the workman did not bring into evidence any appointment letter issued in his favour by the management No.1 i.e. Director Sports Department, U.T.

27. It is vehemently argued by the learned representative for the workman that neither principal employer i.e. management No.1 is registered with the Labour Department for outsourcing the service nor the contractor management No.2 had obtained license for engaging the outsource labour from the Labour Department, U.T. Chandigarh. During evidence the management No.1 did not prove its registration under Section 7 of the CLRA Act and the management No.1 also did not prove that the contractor i.e. management No.2 has obtained license under Section 12 of the CLRA Act. Therefore, the persons employed by the principal employer through contractor would become the employees of the principal employer. In this manner, the workman is employee of principal employer i.e. management No.1. On the other hand, representative for management No.1 has argued that it is registered under Section 7 of the CLRA Act and the management No.2 has also obtained license under Section 12 of the CLRA Act. To support his arguments learned Law Officer for management No.1 referred Exhibit 'MW2/1' i.e. letter bearing Memo No.DS-UT/Estt.-2021/3581 dated 21.06.2021 relating to the subject of extension for award of contract for providing of security and allied staff services on outsource basis addressed from the Assistant Controller (F&A), Director Sports, Chandigarh Administration to M/s Secure Guard Security & Manpower Services, 151, Industrial Area, Phase - II, Chandigarh.

Learned representative for management No.2 argued that management No.2 has obtained the requisite license of contract labour. To support his arguments learned representative for management No. 2 referred Exhibit 'MW1/1' i.e. photocopy of letter bearing Memo No. CL/2019/933 dated 12.02.2019 relating to the subject of renewal of contract labour license for the year 2019 addressed from Licensing Officer (under the Contract Labour (R&A) Act) UT Chandigarh to M/s Guardian Security & Placement Services, Sector 47-C, Chandigarh vide which their license bearing No.CL/UT/CHD/715 dated 03.08.2017 renewed up to 31.12.2019 was sent accompanied with photocopy of license No. CL/UT/CHD/715 dated 03.08.2017 granted to M/s Guardian Security & Placement Service, Sector 47-C, Chandigarh for the period up to 31.12.2017 bearing endorsement made by Licensing Officer (Contract Labour, U.T. Chandigarh) of renewal from 01.01.2018 to 31.12.2018 and then from 01.01.2019 to 31.12.2019. To my opinion, in the present case the relevant date when the services of the workman were engaged by the contractor / management No. 2 for Sports Department / management No.1 is 11.12.2013. The letter Exhibit 'MW2/1' relates to the period of contract of management No.1 with management No.2 for the period from 20.05.2021 to 14.06.2021. Vide letter Exhibit 'MW2/1' the contract of management No.1 with management No.2 was terminated with effect from 14.06.2021 (AN). In this manner management No.1 & 2 did not prove into evidence its valid registration and license on the relevant date i.e. 11.12.2013. Therefore, the management No.1 and management No.2 have violated the provisions of Section 7 & 12 of the CLRA Act for the period with effect from the relevant date i.e. 11.12.2013 to 02.08.2017. The license of management No.2 from 03.08.2017 to 31.12.2019 stands proved from Exhibit 'MW1/1'. As per the judgment of *Hon'ble Supreme Court in Dina Nath Versus National Fertilizers Limited, Civil Appeal No. 2355 of 1991 decided on 22.11.1991*, for violating Section 7 & 12 of the CLRA Act, the principal employer (herein management No.1) and the contractor (herein management No.2) are only liable for prosecution of Section 23 of the CLRA Act and on account of violation of Section 7 & 12 of the CLRA Act, the workman employed by the principal employer through contractor would not become the employee of the principal employer. Therefore, relationship of employer and employee between the management No. 1 and the workman not proved. However, the workman is proved employee of the contractor / management No. 2. As far as management No.3 i.e. M/s Secure Guard is concerned it was engaged as a contractor by the management No.1 subsequent to 23.06.2017 which the alleged date of termination of the workman. Management No. 3 never engaged the workman for deployment as outsource employee with the Sports Department / management No.1 or any other department. Moreover, as per the testimony of MW2 R. L. Manchanda the contract of management No. 3 with management No. 1 came to end on 14.06.2021. Thus, there is no relationship of employer & employee between the management No. 3 and the workman.

28. As far as the termination of the services of the workman is concerned, the workman has alleged that he was terminated by the department on 23.06.2017 and he has not been issued any written termination letter. To my opinion as discussed above, there is no relationship of employer and employee between management No.1 & workman, thus the question of termination of the services of the workman by the management No.1 does not arise. Besides, the workman was never appointed by the Sports Department / management No.1. Learned representative for management No. 2 has taken the plea that the workman stopped reporting for duty suddenly with effect from 23.06.2017, therefore, management No.2 had to depute another Security Guard in his place, keeping in view the nature of duty. Moreover, the workman was given offer to report for duty if he is interested to work with the other clients of management No.2 as a Security Guard, to which the workman refused. The workman was again offered to work with other client of management No.2 as Security Guard during the conciliation proceedings and the offer was declined by the workman. The aforesaid plea of the management No.2 stands proved from the conciliation proceedings Exhibit 'M2' which finds reference of aforesaid offer from management No. 2 and the same was declined by the workman. In para No. 3 on merits of the written statement of management No. 2, similar offer is given to the workman. In replication to the written statement of management No. 2, it is stated that no offer was given to perform duty with management No.1 as a Security Guard. In cross-examination similar offer was again given to the workman / AW1 to which

AW1 replied that he is not ready to work with any client of management No. 2 except Sports Department because it would be far away from his house and he might not be able to meet his family expenses. The aforesaid facts & circumstances coupled with the above said version of AW1 would prove that the workman has declined the offer of management No. 2 for deputing the workman to work with one of the other client of management No. 2 having establishment in Chandigarh or in Mohali. Consequently, on account of refusal to join duty as Security Guard with some other client of the management No. 2 in Chandigarh or at Mohali, the workman is not entitled to reinstatement with continuity of service or back wages or to compensation or any retrenchment benefits. Moreover, the contract of management No.2 with management No.1 has already came to end on 16.03.2019. As per the law laid down by *Hon'ble Supreme Court of India in Civil Appeal Nos.8081-8082 of 2011 decided on 05.07.2019 titled as Director Steel Authority of India Limited Versus Ispat Khadan Janta Mazdoor Union*, held that the principal employer is under no legal obligation by operation of law to absorb contract labour working in the department. Non-compliance or violation or breach of provisions of CLRA Act would entail only penal and no other consequences.

29. AW1 when put to cross-examination by management No. 2 denied the suggestion as wrong that he was found sleeping while on duty on 20.06.2017. He did not visit the office of management No. 2 on 21.06.2017 and admitted his fault *vide* letter dated 21.06.2017. He has seen letter 21.06.2017 which bears his signature but it is not in his handwriting. Again said his signatures were taken on blank paper at the time of joining and this letter is Exhibit 'MX1'. AW1 admitted as correct that he did not make any written protest for taking his signature on blank paper by management No.2, to any of the authority of management No. 2 or management No. 1 or even to any outside agency including Labour Department. AW1 denied the suggestion as wrong that his statement to the effect that his signatures were taken on blank paper is not correct. To my opinion the aforesaid version of AW1 would suggest that AW1 has admitted his signatures on Exhibit 'MX1'. The plea of blank paper theory taken by AW1 / workman that his signatures were obtained on blank paper and subsequently letter Exhibit 'MX1' is prepared by making writing on the blank papers bearing his signature, does not stand proved because AW1 is literate person. No man of ordinary prudence would sign any blank documents or would put his signature on any writing without knowing the contents thereof. Moreover, in the demand notice and in the statement of claim the workman did not plead that any official of management No. 2 ever obtained his signature on any blank documents. AW1 / workman has taken the plea of obtaining his signatures on blank document in order to deny his liability arising from document Exhibit 'MX1'. In Exhibit 'MX1' the workman has tendered his apology that he was sleeping at night during duty and has undertaken not to repeat this mistake again. The aforesaid version of the AW1 proves that the workman is guilty of misconduct.

30. Accordingly, issue No. 1 is decided against the workman and in favour of the managements and issue No.2 is decided in favour of management No.1 & 3 and against the workman.

Relief :—

31. In the light of findings on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.). . .,

The 26th July, 2022.

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 30th August, 2022

No. 13/1/9891-HII(2)-2022/12755.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 43/2018 dated 26.07.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

ASHOK SHARMA S/O SHRI PARAMJIT SHARMA, R/O HOUSE NO. 113,
KHUDA LAHORA, UNION TERRITORY, CHANDIGARH (Workman)

AND

1. CHIEF ENGINEER, PUBLIC HEALTH, UT, SECTOR 9, CHANDIGARH.
2. SUPERINTENDING ENGINEER, PUBLIC HEALTH, UT, SECTOR 9, CHANDIGARH.
3. EXECUTIVE ENGINEER, PUBLIC HEALTH, DIVISION NO. 8, SECTOR 9, CHANDIGARH
4. SUB DIVISIONAL ENGINEER, PUBLIC HEALTH, SUB-DIVISION NO.4, SECTOR 9, CHANDIGARH
5. NOVA ENVIRO ENGINEERS, SCO NO. 117-118, FIRST FLOOR, SECTOR 17-B, CHANDIGARH THROUGH ITS AUTHORISED SIGNATORY. (Management)

AWARD

1. Ashok Kumar, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that he was initially appointed on 01.10.2012 as Operator in AC Plant of Hon'ble High Court Chandigarh on contract basis with the above management and no minimum wages were paid to the workman and only ₹4,500/- per month was given in the year 2012. The last wages of the workman was ₹13,045/- per month including EPF amount (₹11,452/- + EPF ₹1,593/- = ₹13,045/-). The above said amount was paid to the applicant in cash till demonetization and thereafter through cheque. Management No.1 to 4 has outsourced the employment of the AC Plant Operators and the contract was given to management No. 5. The minimum wages for the year 2016-17 of AC Plant Operator is ₹16,695/- per month but the management did not pay full wages after statutory deduction from the wages of the workman as the workman was paid ₹11,452/- per month whereas it comes to ₹15,102/- per month after deduction of EPF and ESI amount, hence the workman was paid ₹3,650/- less from 01.04.2016 to 27.10.2017. Accordingly, total amount of ₹36,500/- was paid less to the workman by the managements. Further arrears of the DC rates wages increased from time to time from the year 2012 till 27.10.2017 has not been paid to the workman. Management No.5 got the cheques of arrears signed from the workman for having bill clearance from management No.1 to 4 but the said amount was never paid to the workman. The workman is matric and ITI Basic Air Conditioning and Refrigeration Training, however, the services of the workman has been terminated illegally by the managements vide verbal order dated 27.10.2017 afternoon on the ground that one employee namely Ram Chand has sought information regarding how many employees engaged in the AC Plant and Fire Pump House situated in the Hon'ble High Court of Punjab & Haryana and whether the employees are paid DC rates or other rate etc. But no information in this regard was supplied and then the said employee has filed an appeal before the First Appellate Authority. Due to this the managements have become revengeful and terminated the services of the workman *vide* verbal order dated 27.10.2017 afternoon in spite of the fact that the work & conduct of the workman is satisfactory. The workman had completed more than 240 days continuously and regularly with the management. The management has not given one month's notice in writing

indicating the reasons for retrenchment and wages in lieu of notice period has been paid to the workman. No retrenchment compensation had been paid to the workman. No notice in the prescribed manner has been served on the appropriate Government. The action of the management is opposed to the provisions of Section 25-F of the ID Act. The management has appointed / engaged fresh workmen after the termination of services of the workman. The management has violated the provisions of Section 25-H of the ID Act. Further the management is playing unfair labour practice whereas some of the employee are working at AC Plant in Sector 16 Hospital and their wages are paid against the AC plant situated in Hon'ble High Court of Punjab & Haryana under the supervision of the management. The services of the workman has been terminated illegally without following the law, hence, the applicant is entitled for reinstatement into service along with full back wages and all consequential benefits. The management has illegally terminated the services of the workman without following the provisions of the ID Act. The management has not maintained the seniority list of workman as required under Section 77 of the ID Act. The management has not followed the principles of 'first come last go' at the time of termination of the services of the workman. The management has also retained the juniors to the workman and other juniors have also been retained in service. The action of the management is opposed to Section 25-G of the ID Act. The management adopted unfair labour practice in terminating the services of the workman as the work for which the workman was appointed is still existing with the management and new man has been engaged against the post and junior to him has been retained in service. The workman approached management No.1 to 3 not to terminate the services of the workman on 26.10.2017 but the management refused for the same. Thereafter, another application was given to management No.1 on 12.12.2017 for reinstatement and continuation of service of the workman but all in vain. Hence, the managements are responsible for illegal termination of the workman and the managements have not paid gratuity, leave encashment, bonus, etc. to the workman. Neither management No.1 to 4 have been registered with the Labour Department nor the contractor i.e. management No.5 has obtained license from the Labour Department, U.T. Chandigarh for engagement of outsourcing employees. Hence, the workman is an employee of management No.1 to 4. Verbal order dated 27.10.2017 of the management *vide* which the services of the workman had been terminated is illegal, arbitrary, malafide, against service rules, against the principles of natural justice and is also against the mandatory provisions of the ID Act. The workman has earlier served demand upon management No.1 to 5 and five copies thereof were also sent to the Assistant Labour Commissioner-cum-Conciliation Officer (ALC), Labour Department, Sector 30, Chandigarh requesting for reinstatement of the workman with continuity of service and back wages and all other benefits and payment of arrears etc. Conciliation proceedings before the ALC, Chandigarh failed and advised the workman *vide* memo No.1473 dated 16.04.2018 to proceed further in the matter as per Sub-section 2-A(2) of the Industrial Disputes (Amendment) Act, 2010. Prayer is made to set aside the illegal termination of the services of the workman dated 27.10.2017 being violative of Section 25-F, 25-G & 25-H of the ID Act and the workman may be ordered to be reinstated in service with continuity of service and with full back wages. The management may be directed to pay the arrears of ₹36,500/- less payment of wages of April, 2017 to 27.10.2017 and further arrears of increased DC rates with effect from April, 2013 to 31.03.2017 to the workman along with 24% interest from the date became due till its payment is made in favour of the workman.

2. On notice, management no. 1 to 4 appeared through its Law Officer and contested the claim of the workman by filing written statement on 10.07.2018. An application for placing on record amended reply on behalf of management No.1 to 4 filed, to which learned representative for the workman made statement, recorded separately, that he has no objection, if the application for placing on record amended reply on behalf of management No.1 to 4 is allowed.

3. In amended reply / written statement preliminary objections are raised on the ground that the Public Health Wing of Chandigarh Administration is functioning under the overall control of Chief Engineer, who is assisted by the Superintending Engineer and is further assisted by number of Executive Engineers with the assistance of various Sub-divisional Engineer in respect of their respective sub-divisions. The Public Health Division No.8, Sector 9, Chandigarh through its Executive Engineer had entered into a contract with M/s Nova Enviro Engineers, SCO No.117-118, First Floor, Sector 17-B, Chandigarh for running and maintenance of AC Plant at the Hon'ble High Court of Punjab & Haryana, Chandigarh *vide* No.9165 dated 14.09.2016 for a period of 12 months. Term of the contract was from 16.09.2016 to 15.09.2017 and thereafter the same was extended up to 27.10.2017 with the mutual consent of both the parties. Thereafter the contract agreement came to an

end with an efflux of time. As per the terms & conditions of the contract agreement, the contractor M/s Nova Enviro Engineers has to make establishment of operator / helpers and other workers / staff for the smooth functioning of the AC plant besides fulfillment of the terms & conditions of the contract. There is no relationship between the department and any of the workman or contractor. The answering managements have already entered into fresh contract agreement for the running & maintenance of AC Plant of Hon'ble Punjab & Haryana High Court, Chandigarh effective on 01.12.2017 for the period of one year vide this office Memo No.10014 dated 28.11.2017 and the said contractor is working till date by engaging appropriate number of Operators / Helpers / Workman, as per the contract agreement.

4. On merits, it is stated that the contract agreement was entered into between management No.3 and management No.5 for running of maintenance of AC plant in Hon'ble High Court of Punjab & Haryana. As per prevalent practice during the contract period, the wages as per the applicable date were to be paid by the contractor and intimation thereof is to be given to the answering management. Accordingly, the contractor after making the payments had furnished the photocopy of the cheques vide which the payments were made to the answering management. There is no relationship of any sort between the answering management and any of the workman of the contractor, therefore, no question arises for termination of the services of the workman in any manner by the answering managements, as alleged by the verbal order dated 27.10.2017. The contract agreement entered into between management No. 3 and management No. 5 on behalf of the Public Health Department had come to end with an afflux of time on 27.10.2017. The answering management is having no concern with any of the workman as his relationship is limited to contract only and that too during the currency of the contract period. The answering management had not violated the provisions of Section 25-F of the ID Act as the services of the workman was not terminated by the answering management. The answering management has not appointed any fresh workman. It has floated tender for maintenance of running of AC Plant and the contractor had been selected on the basis of the bid quoted by him. Further it is for the contractor concerned to engage appropriate number of workman / helpers / operators for doing the assigned job as per the terms & conditions of the contract agreement, which is for the period 01.12.2017 to 30.11.2018. The answering management had not terminated the services of any workman. Some of the workman by introducing themselves to be workman / helpers / operators of management No.5 had attended the office of answering management with a request not to relieve them from job. However, they were also made aware that the contract agreement of their contractor had come to an end with an afflux of time on 27.10.2017 and the department had already initiated the process for tendering the contract afresh. So far as letter dated 12.12.2017 to reinstatement is concerned, the answering management had filed the same for the reasons that they could not take any decision in the said regard for the simple reason that the operators / helpers / workman engaged by the contractor were neither engaged by the contractor were neither engaged with the consent of the department nor shuffled / relieved with the approval and knowledge of the department. There is no requirement for the answering management to get itself registered with the Labour Department and likewise the then contractor had engaged workman less than 20 in numbers. No such alleged or verbal order dated 27.10.2017 was ever issued by the answering management. Contents of para 1, 5, 9 and 10 to 12 are denied for want of knowledge. Contents of para 6 to 8 are denied being wrong. The contents of this para 2 & 16 are admitted being matter of record. Prayer is made that the present demand notice filed by the workman against answering managements may be dismissed.

5. On notice, management No.5 appeared through its representative and contested the claim of the workman by filing written statement on 10.07.2018 raising preliminary objections that the present reference is not maintainable being without jurisdiction and it does not fall within the ambit of Section 2-A of the ID Act as the answering management has never terminated the services of the workman rather he has voluntarily himself left the job and accepted the amount paid by the answering management. The present reference is not maintainable as the workman does not fall within the purview of Section 2(s) of the ID Act. The present reference deserves to be dismissed on the ground that the claim of the workman is false and frivolous and has filed with ulterior motive to take undue advantage, harass and humiliate the answering management by abusing the process of law. The present reference does not fall within the ambit of Section 25-F of the ID Act as the workman has never completed 240 days with the answering management continuously in any calendar year preceding to the date of his voluntarily leaving the job.

6. On merits, it is admitted that the workman had joined the answering management on 01.10.2012 on contract basis and his last monthly wage was ₹13,277/-. The fact that management No.1 to 4 has outsourced

the employment of the AC Plant Operators and the contract was given to management No.5 is replied being matter of record. It is admitted that the answering management has not paid the increased rate of wages for the period from 01.04.2016 till 27.10.2017, as the answering management has not received the same from management No.3. As and when it is released by management No.3, the same will be paid to the workman. It is denied that the workman is matric pass having ITI basic air conditioning and refrigeration training. In fact, the workman was under matric and possess a certificate of vocational training from the Ministry of Labour & Employment. The answering management has not terminated the services of the workman rather the workman has himself voluntarily left the services / job with the answering management. The answering management has not violated any provisions of the ID Act and principles of natural justice as the workman himself voluntarily left the job. The fact that work is still existing with the answering management is admitted. Rest of the averments of the claim statement are denied being wrong, false, frivolous, baseless and devoid of any merits. Prayer is made that the present reference may be dismissed being devoid of merits and without jurisdiction.

7. The workman filed rejoinder to written statement of management No.5, wherein the contents of written statement are denied as wrong and in correct except the admitted facts of the claim and the averments of the statement of claim are reiterated. Rejoinder to the written statement of management No. 1 to 4 not filed.

8. From the pleadings of the parties, following issues were framed :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether there is no employer-employee relationship between management No.1 & 4 and workman ? OPM-1 to 4
3. Relief.

9. In evidence, the workman Ashok Sharma examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 16.03.2022 learned representative for the workman closed the evidence. On 03.03.2022 none appeared on behalf of management No. 5 so management No. 5 was proceeded against *ex parte*. On 07.04.2022 management No.5 filed an application for setting aside *ex parte* order dated 03.03.2022.

10. During the pendency of the present industrial, on 26.07.2022, the workman suffered a statement, recorded separately, and reproduced as below :—

"Stated that I have no objection if the application seeking to set aside ex-parte order dated 03.03.2022 qua management No.5 is allowed.

I have effected compromise with the managements, therefore, I did not intent to proceed further with my present industrial dispute application filed under Section 2-A(2) of the Industrial Disputes Act, 1947 and withdraw the same. The present industrial dispute may kindly be disposed off accordingly."

11. In view of the aforesaid statement, application dated 07.04.2022 filed by management No. 5 seeking setting aside *ex parte* order dated 03.03.2022 was allowed and *ex parte* order dated 03.03.2022 passed against management No.5 was ordered to be set aside. In view of the above mentioned statement of the workman, the present industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

(Sd.). . .,

The 26th July, 2022.

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 30th August, 2022

No. 13/1/9890-HII(2)-2022/12757.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 50/2017 dated 26.07.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RAJESH KUMAR S/O SHRI RAM SHARAN, R/O VILLAGE ROHERA, TEHSIL & DISTRICT KAITHAL, AT PRESENT R/O HOUSE NO. 301, SAINI VIHAR, PHASE - I, BALTANA, DISTRICT MOHALI, PUNJAB (Workman)

AND

1. DIRECTOR, SPORTS DEPARTMENT, UT, HOCKEY STADIUM, SECTOR 42, CHANDIGARH.
2. GUARDIAN SECURITY AND PLACEMENT SERVICES, THROUGH ITS AUTHORISED SIGNATORY, SCO NO. 114, FIRST FLOOR, SECTOR 47C, CHANDIGARH.
3. SECURE GUARD, INDUSTRIAL PLOT NO. 151, INDUSTRIAL AREA, PHASE - II, CHANDIGARH THROUGH ITS AUTHORISED REPRESENTATIVE. (Management)

AWARD

1. In the industrial dispute received in this Tribunal / Court under Section 2-A(2) of the Industrial Disputes Act, 1947 as amended Act, 2010 (*hereinafter in short called 'ID Act'*) filed by the workman, it is submitted that the workman was engaged initially as Peon and remained as Peon with management No.1 till April 2009. Thereafter the workman was appointed as Security Guard from May 2009 and remained as Security Guard with the managements till 15.05.2017. The workman was paid DC rates and his last pay was ₹17,690/- per month, after deducting PF and ESI, he was paid net ₹15,257/- per month. The workman has not been paid increased DC rates from April 2017 to June, 2017 for which the separate application / petition under payment of wages Act is being filed. The services of the workman were terminated on the illegal recommendations of concerned Manager of management No. 1 *vide* verbal order with effect from 16.05.2017. Fresh persons in place of workman has been appointed and no principle of 'first come last go' has been adopted by the managements. Hence, the termination is illegal and against the provisions of the ID Act. Junior to the workman has been retained in service whereas the services of the workman has been illegally terminated *vide* verbal order on 16.05.2017. The managements have violated the provisions of Section 25-G, 25-H & 25-F of the ID Act and the services of the workman has been terminated without following the above provisions of the ID Act. Before illegally terminating the services of the workman, no notice, charge sheet has ever been served upon him and no inquiry has been conducted against the workman. Hence, the action of terminating the services *vide* verbal order is illegal and against the law. The Union of Sports Department, U.T. Chandigarh including employees of contractor has served a demand notice upon the managements. The managements instead of considering the demands of the union has illegally terminated the services of the workman on 16.05.2017. After illegal termination of the services of workman, *vide* verbal order dated 16.05.2017 the

workman served a legal demand notice under Section 2-A of the ID Act upon the managements and the Conciliation Officer-cum-Assistant Labour Commissioner, U.T. Chandigarh conducting conciliation proceedings. On 11.07.2017 it was held by Assistant Labour Commissioner, U.T. Chandigarh that no amicable settlement could be made possible within stipulated period for conciliation of disputes and thus the conciliation proceedings stands closed at his level and advised the party concerned to take action as per Section 2-A of the ID Act as deemed fit. Hence, this claim. The workman is not gainfully employed anywhere from the date of illegal termination of services i.e. 16.05.2017 till date. The workman visited many times to the managements for his reinstatement of service but all in vain. The managements had adopted wrong procedure to remove old workmen and at their place appointed fresh workmen to deprive old workmen from their legal right. The similar procedure has been adopted in case of the workman. The management has not conducted inquiry or served notice or paid compensation in lieu of notice to the workman, hence, the management has violated the provisions of Section 25-F, 25-G & 25-H of the ID Act. Due to illegal termination order, the family of the workman has badly disturbed financially and mentally. The workman had completed more than 240 days continuously in a year so termination order is illegal. Neither the principal employer i.e. management No.1 is registered with the Labour Department for outsourcing the services of Security Guard nor the contractor-management No.2 has obtained license for engaging the outsource labour from the Labour Department, Union Territory Chandigarh, hence, action of termination of services of the workman is illegal and against the provisions of the ID Act and provisions of Abolition of Contract Labour Act. The cause of action accrued to the workman on 16.05.2017 when his services were verbally terminated and thereafter on 11.07.2017 when the conciliation proceedings were closed by the Assistant Labour Commissioner and intimated to the workman vide Memo No. 4012 dated 17.07.2017 regarding closing of conciliation proceedings. The cause of action is still continuing one.

2. No such or similar proceedings are pending before any court of law, except the present one. Prayer is made that the workman may be reinstated into service with continuity in service and full back wages and all other consequential benefits from time to time.

3. On notice, management No.1 appeared through Law Officer and contested the case of the workman by filing written statement on 29.01.2018 wherein it is stated that the services of management No. 2 were hired by the answering management No.1 for providing manpower. The workman was engaged by management No. 2 and not by management No.1 as alleged in the statement of claim. It was management No. 2 who appointed the workman and deputed in the office of answering management. As regards payment of wages as revised DC rates for the period with effect from April 2017 to June 2017, the Sports Department had already paid ₹59,001/-. As per bill submitted by management No. 2 on account of revised wages to the workman in the month of August, 2017. In fact, the services of the management No. 2 were hired by the answering management and the said workman was engaged by the management No. 2 and not the management No.1. The workman was replaced by the management No.2 and the answering management / department has no concern with the termination of workman as alleged. The workman is employee of management No.2 for all intents and purposes. The workman has been removed / replaced by management No. 2. It is the matter between the workman and the service provider and the answering management / department has no concern with the removal / replacement of the workman. The workman was deputed through outsource service provider i.e. management No. 2. The answering management has no relation with the workman as he is appointed through outsource. The workman has no relation with the answering management / department as his services were provided by the management No. 2, to whom the contract for providing the manpower was awarded by the answering management. Therefore, the question does not arise of illegal termination, issue of notice, charge sheet and conducting of inquiry by the answering management against the workman. The services of workman were replaced by the management No.2. The answering management is not responsible for the removal of the

workman as he was not employee of the answering management. The answering management / department is registered with the Labour Department under the Contract Labour Act, 1970. The present service provider has also obtained the labour license from the labour department. It is stated that the facts relating to termination of services of the workman vide verbal order dated 16.05.2017, issue of legal demand notice under Section 2-A of the ID Act upon the managements and the conciliation officer-cum-Assistant Labour Commissioner, U.T. Chandigarh, conducting of conciliation proceedings by the Assistant Labour Commissioner, U.T. Chandigarh and further the fact the conciliation proceedings stand closed are matter of record. Rest of the contents of the statement of claim are denied as wrong except para 15 which is denied for want of knowledge and prayer is made that the claim petition may be dismissed against the answering management.

4. Upon notice, management No.2 appeared through its representative Shri D. P. Sharma. Management No.2 contested the claim petition by filing separate written statement dated 21.12.2017, wherein preliminary objections were taken up on the grounds that the services of the workman have never been terminated, as alleged. The factual position remains that the duty hours of concerned workman were from 2:00 P.M. to 10:00 P.M. On 15.05.2017 the workman reported for duty at 6:30 P.M. instead of 2:00 P.M. but he marked his attendance, as if he reported for duty at 2:00 P.M. On the very same day he was to leave his duty at 10:00 P.M. but during surprise check at 9:00 P.M. it was found that he filled his relieving time in the register before hand as 10:00 P.M. whereas the same was to be filled while relieving the office. Keeping the aforesaid incident, the workman was advised to visit their office in Sector 47-C, Chandigarh on 16.05.2017 for counselling etc. but he did not visit their office at all, as such, he has been absenting himself from duty without any intimation since 16.05.2017. Hence, the allegation of termination is wrong, false and baseless. The present reference and claim statement is bad in law, thus, not maintainable. The same deserves to be dismissed.

5. Further, on merits, it is admitted as correct that the workman was engaged initially as Peon and remained as Peon with management No.1 till April 2009. Thereafter the workman was appointed as Security Guard from May 2009 and remained as Security Guard with the managements till 15.05.2017. The workman was paid DC rates and his last pay was ₹17,690/- per month, after deducting PF and ESI, he was paid net ₹15,257/- per month. It is stated that the answering management No.2 is engaged in the business of outsourcing manpower to various clients i.e. private and Government establishments situated in the Union Territory Chandigarh and in the State of Punjab. Management No.1 i.e. Director Sports Department, U.T. Chandigarh is one of such clients. The contract labour so supplied by them in the Government establishments gets wages as per the DC rates and in the private establishments the contract labour gets wages as notified by the appropriate Government / Labour Department of the concerned state under the Minimum Wages Act, 1948. In the present case the management No.1 is the principal employer and the answering management No.2 is the contractor. The workman concerned was deployed to work as Security Guard by the answering management No.2 with the management No.1. The management No.1 being a Government department is covered by the DC rates payable to the contract labour. The revised DC rates with effect from April 2017 were to be implemented by the management No.1 and thereafter the same were to be released to the answering management No.2. The revised DC rates have now been paid to the workman against the claim application under the Payment of Wages Act. It is denied that the services of the workman were terminated vide verbal order with effect from 16.05.2017. In fact, the workman himself stopped attending to his duty with effect from 06.05.2017 without any intimation. The workman had to visit their office on 16.05.2017 but neither he visited their office nor reported for duty. He was working as a Security Guard. Due to his sudden unauthorised absence, his duty was to be performed by someone else. Therefore, there was no other option left with them but to depute other staff in place of the workman. In any case, if the concerned workman is still ready to work with them, he should be directed to visit their office in Sector 47-C, Chandigarh immediately so that he can be deputed to work with one of their other client having establishment in Chandigarh or Mohali. These clients are governed by the Minimum Wages Act, 1948 and the contract labour deployed by the answering management No. 2 with

them are paid minimum rates of wages notified by the appropriate Government / Labour Department from time to time. Section 25-F, 25-G & 25-H of the ID Act are not attracted in the present case. Since the workman himself remained away from the work, no charge sheet was required to be issued nor any inquiry was required to be conducted. The management No.1 being the principal employer and the management No.2 being the contractor for the management No.1 are duly registered under the Contract Labour (Regulation & Abolition) Act, 1970 (*hereinafter in short called as 'CLRA Act'*). The workman has no cause of action. Rest of the contents of the statement of claim are denied as wrong. Additional submission is made to the effect that if the workman so desires he can visit their office in Sector 47-C, Chandigarh immediately so that he could be deployed as Security Guard with one of their other clients having establishment in Chandigarh or at Mohali. These private establishments are not covered by the DC rates but are governed by the notification issued by the State Government under the Minimum Wages Act, 1948. Prayer is made that the reference may be declined with cost.

6. On notice, management No.3 appeared through representative Shri R. L. Manchanda and contested the statement of claim by filing written statement on dated 05.01.2021 wherein preliminary objections are raised on the grounds that the workman had served demand notices under Section 2-A of the ID Act to the managements No.1 & 2 because he had master servant relation with the said parties. The workman had no employee-employer relations with the management No.3, hence, no dispute can be made qua M/s Secure Guard Security & Manpower Services. The managements No.1 & 2 have contested the demand notice before he Assistant Labour Commissioner, Chandigarh and no compromise / conciliation have been arrived, then the appropriate Government had referred the matter for adjudication to this Hon'ble Court. During the stage of evidence of the parties, the workman has wrongly impleaded the answering management as party to the dispute. The managements No. 1 & 2 could not have given their respective consents to midway implead the management No. 3 in the present industrial dispute when the workman for no stretch of imagination had ever maintained master-servant relation with the management No. 3. Hence, the present claim of workman has no bearing *qua* management No.3 and the same needs to be dismissed with cost.

7. Further on merits, similar stand is taken as taken in the preliminary objection. It is stated that averments made in para 1 to 14 of the statement of claim does not pertain to the answering management No.3 hence, needs no reply. Prayer is made that the involvement / identity of management No.3 in the present industrial dispute reference may be dropped at the outset with heavy costs, in the interest of natural justice, equity and fair play.

8. The workman filed separate replications to the written statement of management No.1 to 3 wherein the contents of written statements are denied as wrong except admitted facts of the claim statement and averments of the claim statement are reiterated. In the replication to the written statement of management No. 2, additional plea is taken that written statement is neither verified nor supported by any affidavit. Even no resolution of the company in favour of the authorised signatory has been attached with the written statement, therefore, the same cannot be read as defence on behalf of management No. 2 and the defence of management No. 2 may be struck off on this ground.

9. From the pleadings of the parties, following issues were framed by *vide* order 26.02.2018 :—

1. Whether there is no employer-employee relationship between management No.1 and workman ? OPM-1
2. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
3. Relief.

10. Vide order dated 25.02.2020 M/s Secure Guard was impleaded as management No.3. After taking written statement from management No.3 and replication to the written statement of management No.3, vide order dated 17.02.2021 issues were reframed as below :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether there is no employer-employee relationship between management No.1 & 3 and workman ? OPM-1 & 3
3. Relief.

11. In evidence the workman Rajesh Kumar examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents i.e. photocopy of his identity card bearing date of issue 15.12.2007, issued by Ascenture Management Service Private Limited vide Exhibit 'W1'; photocopy of employees' State Insurance Corporation bearing insurance No.10143912 relating to Rajesh Kumar Sherawat vide Exhibit 'W2'; photocopy of aadhar card of Rajesh Kumar Exhibit 'W3'; photocopy of bank account passbook of Rajesh Kumar bearing account No.5000210940-3 maintained with Allahabad Bank vide Exhibit 'W4'; photocopy of the certificate dated 25.12.2010 relating to Rajesh Kumar regarding completion of prescribed training for the engagement or employment as a Private Security Supervisor / Guard for the period from 01.12.2010 to 21.12.2010 issued by Young Men's Christian Association Chandigarh (YMCA) vide Exhibit 'W5'; photocopy of certificate relating to Rajesh for undergoing training in the handling of rifle at the Haryana Home Guard, Training Centre from 22.07.2014 to 28.07.2014, issued by District Commandant Home Guard Haryana, Kaithal vide Exhibit 'W6'; photocopy of identity card relating to Rajesh Kumar bearing date of issue 04.09.2014 issued by Guardian Security vide Exhibit 'W7' and photocopy of passbook of saving bank account No.20127646247 maintained with State Bank of India, Sector 23, Chandigarh vide Exhibit 'W8'. On 15.07.2021 learned representative for the workman tendered into evidence photocopy of letter bearing Memo No.DS-UT-Estt.-2021/2070 dated 01.04.2021 on the subject of withdrawal of court cases addressed from Superintendent (D), Director Sports, Chandigarh Administration to Shri Rafi Haider - Ex-Security Guard and to Shri Rajesh Kumar - Ex-Security Guard vide Exhibit 'W9' and closed evidence of the workman.

12. On the other hand, managements examined MW1 Arun Kumar, Clerk, office of the Assistant Labour Commissioner, Union Territory Chandigarh and tendered documents i.e. the copy of demand notice dated 27.06.2017 issued by Rajesh Kumar to the Director Sports Department, U.T., Hockey Stadium, Sector 42, Chandigarh and Guardian Security & Placement Services through its authorised signatory, Sector 47-C, Chandigarh relating to subject of demand notice against illegal termination order dated 16.05.2017 of Rajesh Kumar, Security Guard vide Exhibit 'M1'; copy of proceedings dated 11.07.2017 vide Exhibit 'M2' and a copy of failure report dated 17.07.2017 of Assistant Labour Commissioner-cum-Conciliation Officer relating to demand notice of Rajesh Kumar vide Exhibit 'M3'.

13. Managements further examined MW2 Krishan Lal - Senior Judo Coach, Sports Department, Sector 42, Chandigarh Administration, who tendered his affidavit Exhibit 'MW2/A' along with authority letter dated 01.01.2021 issued in his favour by the Director Sports, Chandigarh Administration, authorising him to attend the court on 05.01.2021 to submit affidavit on behalf of the Sports Department, U.T. Chandigarh for evidence / witness vide Exhibit 'MW2/1'. Managements examined MW3 H. S. Chahal - Managing Director, Guardian Security & Placement Service, Sector 47-C, Chandigarh, who tendered his affidavit Exhibit 'MW3/A' along with photocopy of letter bearing Memo No.CL/2019/933 dated 12.02.2019 relating to the subject of renewal of contract labour license for the year 2019 addressed from Licensing Officer (under the Contract Labour (R&A) Act) UT Chandigarh to M/s Guardian Security & Placement Services, Sector 47-C, Chandigarh

vide which their license bearing No.CL/UT/CHD/715 dated 03.08.2017 renewed up to 31.12.2019 was sent accompanied with photocopy of license No. CL/UT/CHD/715 dated 03.08.2017 granted to M/s Guardian Security & Placement Service, Sector 47-C, Chandigarh for the period up to 31.12.2017 bearing endorsement made by Licensing Officer (Contract Labour, U.T. Chandigarh) of renewal from 01.01.2018 to 31.12.2018 and then from 01.01.2019 to 31.12.2019 *vide* Exhibit 'MW3/1'.

14. The managements examined MW4 R. L. Manchanda - Manager (Legal), Secure Guard Security & Manpower Service, plot No.151, Phase - II, Industrial Area, Chandigarh who tendered his affidavit Exhibit 'MW4/A' along with photocopy of letter bearing Memo No.DS-UT/Estt.-2021/3581 dated 21.06.2021 relating to the subject of extension for award of contract for providing of security and allied staff services on outsource basis addressed from the Assistant Controller (F&A), Director Sports, Chandigarh Administration to M/s Security Guard Security & Manpower Services, 151, Industrial Area, Phase - II, Chandigarh *vide* Exhibit 'MW4/1'. In cross-examination of MW3 H. S. Chahal, learned representative for the workman brought into evidence the document Exhibit 'MX1/1'. During course of arguments learned representative for the workman and learned representative for management No.2 have jointly made a statement that no document Exhibit 'MX1' was tendered into evidence. Due to inadvertence reference of Exhibit 'MX1' is made during the cross-examination of MW3 H. S. Chahal as connected cases were also pending on that date. On 02.03.2022 Law Officer for the management No. 1 closed the evidence on behalf of management No. 1. On 02.09.2021 representative for management No. 2 closed the evidence on behalf of management No. 2. On 02.09.2021 representative for management No. 3 closed the evidence of management No. 3.

15. I have heard arguments of learned representatives for the parties and Law Officer for management No.1 and perused the judicial file. My issue-wise findings on the issues reframed *vide* order dated 17.02.2021 are as below :—

Issue No. 1 & 2 :—

16. Onus to prove issue No. 1 is on the workman and onus to prove issue No. 2 is on management No. 1 & 3. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

17. To prove its claim, the workman Rajesh Kumar examined himself as AW1 and *vide* his affidavit Exhibit 'AW1/A' deposed the averments of claim in toto. AW1 supported his oral version with documents Exhibit 'W1' to 'W8'. For further corroboration learned representative for the workman referred document Exhibit 'W9'.

18. On the other hand, learned Law Officer for management No.1 referred the testimony of MW2 Krishan Lal *vide* his affidavit Exhibit 'MW2/A' deposed that he is working as Senior Judo Coach in the Sports Department, Chandigarh Administration and authorised to appear on this Hon'ble Court to give evidence *vide* authority letter Exhibit 'MW2/1'. MW2 deposed that the services of management No. 2 were hired by the answering management for providing manpower and the said workmen was engaged by management No. 2, who appointed the workmen and deputed in the office of answering management. The workman was replaced by the management No.2 and the Sports Department has no concern with the termination of workman as the workman is employee of management No. 2 for all intents and purposes. Therefore, it is a matter between the workman and the services provider, as such the Sports Departments has no concern with the removal / replacement of the workman. The workman was deputed through outsource service provider i.e. management No. 2. The answering management has no relation with the workman as he is appointed through outsource i.e. management No.2, to whom contract for providing manpower was awarded by the answering management. Therefore, question does not arise of illegal termination, issue of notice, charge sheet and conducting of inquiry by the answering management against the workman. As regards payment of wages as per revised DC rate,

for the period from April 2017 to June 2017, the Sports Department has already paid ₹59,001/- as per bill submitted by management No. 2 on account of revised wages to the workmen in the month of August 2017. MW2 further deposed that the Sports Department is registered with the Labour Department under the CLRA Act. The present service provider has also obtained the labour license from the Labour Department. The workman is not entitled for any relief claimed by him in his present claim.

19. Learned representative for management No. 2 referred the testimony of MW1 Arun Kumar, Clerk, Office of Labour Commissioner, U.T. Chandigarh, who deposed that he is a summoned witness and has brought the summoned record pertaining to reference under Section 2-A of the ID Act with regard to workman Rajesh Kumar. MW1 proved on record Exhibit 'M1' to 'M3'.

20. Learned representative for management No.2 further referred to the testimony of MW3 H. S. Chahal, Managing Director, Guardian Security & Placement Services, Sector 47-C, Chandigarh who vide his affidavit Exhibit 'MW3/A' deposed that he is conversant with the facts of the present case. Their contract with the management No.1 has already ended up and terminated with effect from 16.03.2019 vide contract of termination letter dated 08.03.2019 by management No. 1, copy of which is Mark 'MX2/1'. Written comments to the demand notice of the workman were filed before the Conciliation Officer and through additional submissions the workman was given the offer of deployment as security Guard with one of their other client in Chandigarh or at Mohali but the workman had declined the offer. Similar offer was made to the workman through the Assistant Labour Commissioner, Chandigarh, and the same was declined by the workman which can be seen from the conciliation proceedings dated 30.06.2017 Exhibit 'M2'. Similar offer was given to the workman in the written statement filed in response to his statement of claim, which offer was also declined. During cross-examination the workman stated that he is not ready to work with any client of management No.2 except Sports Department because it would be far away from his home and he might not be able to meet his family expenses. MW3 further deposed that the duty hours of the concerned workman were from 2:00 P.M. to 10:00 P.M. On 15.05.2017 the workman reported for duty at 6:30 P.M. instead of 2:00 P.M. but the workman marked his attendance, as if he reported for duty at 2:00 P.M. On the very same day he was to leave his duty at 10:00 P.M. but during surprise check at 9:00 P.M. it was found that he filled his relieving time in the register before hand as 10:00 P.M. whereas the same was to be filled while relieving the office. Keeping the aforesaid incident, the workman was advised to visit their office in Sector 47-C, Chandigarh on 16.05.2017 for counselling etc. but he did not visit their office at all, as such, he has been absenting himself from duty without any intimation since 16.05.2017. Hence, the allegation of termination is wrong, false and baseless. The services of the workman were never terminated by them. The workman in his cross-examination has stated that his services were terminated by the department. Since the workman remained absent without intimation and other staff was deployed as the assignment of Security Guard cannot be left unattended. The workman himself remained absent and did not visit their office for fresh deployment, thus, no charge sheet or inquiry was necessitated. The management No. 1 is the principal employer and the management No.2 was the contractor in respect of the workman. Management No. 2 was registered under the CLRA Act, copy of license is Exhibit 'MW1/1'. The contract of management No. 2 has already been terminated by management No.1 with effect from 16.03.2019, therefore the workman is not entitled to any relief whatsoever from management No.2.

21. Learned representative for management No.3 referred testimony of MW4 R. L. Manchanda, who vide his Exhibit 'MW4/A' deposed that for the sake of brevity, the contents of his written statement may be read part and parcel of his affidavit. It is specifically deposed that presently the services contractor of the client is not with the agency of deponent as the same has come to an end with effect from 15.06.2021 and the workman has been allotted to some other service provider vide letter No. DS-UT-Esstt.-2021/3581 dated 21.06.2021 issued by the client. It is totally beyond the control of the agency of the deponent to make any submission, to extend any help to any of the contractually deployed staff with the then client of the defendant.

22. In the statement of claim the workman Rajesh Kumar has mentioned that he was initially appointed as Peon on 11.01.2007. As per the evidence of record the actual date of initial appointment of the workman Rajesh Kumar is 01.11.2007. When put to cross-examination AW1 Rajesh Kumar (workman) stated that he was engaged by the contractor on 01.11.2007. AW1 admitted as correct that in his affidavit his initial appointment has been wrongly mentioned as 11.01.2007. To my opinion the date of initial appointment is a matter of record and the incorrect date 11.01.2007 instead of correct date 01.11.2007 is merely a clerical mistake. Therefore, the initial date of appointment is considered as 01.11.2007.

23. As far as relationship of employer-employee between management No.1 & 3 on one side and the workman other side is concerned, the workman in his cross-examination conducted by management No.1 has stated that he was engaged by the contractor Ascenture Management on 01.11.2007. Thereafter on 10.12.2013 he was appointed by the management No. 2 (Guardian Security). He has not made Ascenture Management as party in the present reference. AW1 admitted as correct that his work & conduct was observed by the contractor then the workman was taken by the Sports Department i.e. management No.1. AW1 when put to cross-examination by management No. 2 stated that he was deployed as Security Guard in the Sports Department by M/s Guardian Security i.e. management No. 2. He was deployed by another contractor namely Ascenture Management. When the contract with the Ascenture Management was ended with the management No.1, the contract was given to management No. 2 and he was put on the rolls of management No.2. AW1 admitted as correct that the contract with the management No. 2 has already been ended up with the management No.1 in March, 2019 and in its place M/s Secure Guard Agency has taken over. It is pertinent to mention here that initially the workman filed statement of claim against management No.1 i.e. Director Sports Department, U.T., Hockey Stadium, Sector 42, Chandigarh and management No. 2 i.e. Guardian Security & Placement Services through its authorised signatory Sector 47-C, Chandigarh. On 20.12.2019 the workman filed an application to implead M/s Secure Guard as management No. 3. On 04.02.2020 learned representative for management No. 2 by making endorsement on the application pleaded no objection if the application for impleading M/s Secure Guard is allowed. On 25.02.2020 learned Law Officer for management No.1 pleaded no objection if the application for impleading M/s Secure Guard, Industrial Plot No.151, Industrial Area, Phase II, Chandigarh as management No. 3 is allowed. *Vide* order dated 25.02.2020 M/s Secure Guard, Industrial Plot No.151, Industrial Area, Phase II, Chandigarh was ordered to be impleaded as management No. 3. On 25.02.2020 amended title was filed. Besides, from the workman's own document i.e. Exhibit 'W1' it is established that the workman Rajesh Kumar designation Peon / Attendant was engaged by Ascenture Management Services Private Limited. Exhibit 'W1' is the identity card of Rajesh Kumar issued on 01.07.2011 mentioning his place of posting Sports Department, Sector 23, Chandigarh and the said identity card was issued by the authorised signatory of Ascenture Management Services Private Limited. In the present case the workman did not plead that Ascenture Management Services Private Limited was not licensed contractor. From Exhibit 'W2' it is proved that the workman Rajesh Kumar was allotted insurance No.10143912 under the Employees' State Insurance Corporation. Exhibit 'W2' incorporates the date of appointment of Rajesh Kumar as 01.11.2007. Further AW1 in his cross-examination conducted by management No. 2 admitted as correct that he used to receive his wages from the management No. 2 and the same was transferred every month in his bank account. AW1 admitted as correct that he was covered under the EPF and ESI scheme. AW1 admitted as correct that every month contribution towards EPF and ESI was deducted from the salary by his employer i.e. management No. 2 and thereafter the amount of his salary was transferred in his bank account. AW1 admitted as correct that management No.1 was the principal employer and the management No. 2 was the contractor. From the aforesaid of version of AW1 it is duly established on record that initially the workman was appointed on 01.11.2007 by the principal employer i.e. management No.1 through contractor Ascenture Management and after the contract of management No.1 ended with the Ascenture Management, then on 10.12.2013 the workman was appointed by the contractor Guardian Security & Placement Services i.e. management No. 2. Above all

the workman did not bring into evidence any appointment letter issued in his favour by the management No.1 i.e. Director Sports Department, U.T.

24. It is vehemently argued by the learned representative for the workman that neither principal employer i.e. management No.1 is registered with the Labour Department for outsourcing the service nor the contractor management No. 2 had obtained license for engaging the outsource labour from the Labour Department, U.T. Chandigarh. During evidence the management No.1 did not prove its registration under Section 7 of the CLRA Act and the management No.1 also did not prove that the contractor i.e. management No.2 has obtained license under Section 12 of the CLRA Act. Therefore, the persons employed by the principal employer through contractor would become the employees of the principal employer. In this manner, the workman is employee of principal employer i.e. management No.1. On the other hand, representative for management No.1 has argued that it is registered under Section 7 of the CLRA Act and the management No. 2 has also obtained license under Section 12 of the CLRA Act. To support his arguments learned Law Officer for management No.1 referred Exhibit 'MW4/1' i.e. letter bearing Memo No.DS-UT/Estt.-2021/3581 dated 21.06.2021 relating to the subject of extension for award of contract for providing of security and allied staff services on outsource basis addressed from the Assistant Controller (F&A), Director Sports, Chandigarh Administration to M/s Secure Guard Security & Manpower Services, 151, Industrial Area, Phase - II, Chandigarh. Learned representative for management No. 2 argued that management No.2 has obtained the requisite license of contract labour. To support his arguments learned representative for management No.2 referred Exhibit 'MW3/1' i.e. photocopy of letter bearing Memo No. CL/2019/933 dated 12.02.2019 relating to the subject of renewal of contract labour license for the year 2019 addressed from Licensing Officer (under the Contract Labour (R&A) Act) UT Chandigarh to M/s Guardian Security & Placement Services, Sector 47-C, Chandigarh vide which their license bearing No.CL/UT/CHD/715 dated 03.08.2017 renewed up to 31.12.2019 was sent accompanied with photocopy of license No. CL/UT/CHD/715 dated 03.08.2017 granted to M/s Guardian Security & Placement Service, Sector 47-C, Chandigarh for the period up to 31.12.2017 bearing endorsement made by Licensing Officer (Contract Labour, U.T. Chandigarh) of renewal from 01.01.2018 to 31.12.2018 and then from 01.01.2019 to 31.12.2019. To my opinion, in the present case the relevant date when the services of the workman were engaged by the contractor/ management No.2 for Sports Department / management No.1 is 10.12.2013. The letter Exhibit 'MW4/1' relates to the period of contract of management No.1 with management No. 2 for the period from 20.05.2021 to 14.06.2021. *Vide* letter Exhibit 'MW4/1' the contract of management No.1 with management No. 2 was terminated with effect from 14.06.2021 (AN). In this manner management No. 1 & 2 did not prove into evidence its valid registration and license on the relevant date i.e. 10.12.2013. Therefore, the management No. 1 and management No.2 have violated the provisions of Section 7 & 12 of the CLRA Act for the period with effect from the relevant date i.e. 10.12.2013 to 02.08.2017. The license of management No. 2 from 03.08.2017 to 31.12.2019 stands proved from Exhibit 'MW3/1'. As per the judgement of *Hon'ble Supreme Court in Dina Nath Versus National Fertilizers Limited, Civil Appeal No.2355 of 1991 decided on 22.11.1991*, for violating Section 7 & 12 of the CLRA Act, the principal employer (herein management No.1) and the contractor (herein management No.2) are only liable for prosecution of Section 23 of the CLRA Act and on account of violation of Section 7 & 12 of the CLRA Act, the workman employed by the principal employer through contractor would not become the employee of the principal employer. Therefore, relationship of employer and employee between the management No.1 and the workman not proved. However, the workman is proved employee of the contractor / management No.2. As far as management No.3 i.e. M/s Secure Guard is concerned it was engaged as a contractor by the management No.1 subsequent to 16.05.2017 which the alleged date of termination of the workman. Management No.3 never engaged the workman for deployment as outsource employee with the Sports Department / management No.1 or any other department. Moreover, as per the testimony of MW4 R. L. Manchanda the

contract of management No. 3 with management No.1 came to end on 14.06.2021. Thus, there is no relationship of employer & employee between the management No.3 and the workman.

25. As far as the termination of the services of the workman is concerned, the workman has alleged that he was terminated by the department on 16.05.2017 and he has not been issued any written termination letter. He was terminated verbally by Shri Gurdeep Singh, Manager of management No. 1. To my opinion as discussed above, there is no relationship of employer and employee between management No.1 & workman, thus the question of termination of the services of the workman by the management No.1 does not arise. Besides, the workman was never appointed by the Sports Department / management No. 1. Learned representative for management No.1 has taken the plea that the workman stopped reporting for duty suddenly with effect from 16.05.2017, therefore, management No. 2 had to depute another Security Guard in his place, keeping in view the nature of duty. Moreover, the workman was given offer to report for duty if he is interested to work with the other clients of management No. 2 as a Security Guard, to which the workman refused. The workman was again offered to work with other client of management No. 2 as Security Guard during the conciliation proceedings and the offer was declined by the workman. The aforesaid plea of the management No. 2 stands proved from the conciliation proceedings Exhibit 'M2' which finds reference of aforesaid offer from management No. 2 and the same was declined by the workman. In para No.3 on merits of the written statement of management No. 2, similar offer is given to the workman. In replication to the written statement of management No. 2, it is stated that no offer was given to perform duty with management No.1 as a Security Guard. In cross-examination similar offer was again given to the workman / AW1 to which AW1 replied that he is not ready to work with any client of management No.2 except Sports Department because it would be far away from his house and he might not be able to meet his family expenses. The aforesaid facts & circumstances coupled with the above said version of AW1 would prove that the workman has declined the offer of management No. 2 for deputing the workman to work with one of the other client of management No. 2 having establishment in Chandigarh or in Mohali. Consequently, on account of refusal to join duty as Security Guard with some other client of the management No. 2 in Chandigarh or at Mohali, the workman is not entitled to reinstatement with continuity of service or back wages or to compensation or any retrenchment benefits. Moreover, the contract of management No. 2 with management No.1 has already came to end on 16.03.2019. As per the law laid down by **Hon'ble Supreme Court of India in Civil Appeal Nos.8081-8082 of 2011 decided on 05.07.2019 titled as Director Steel Authority of India Limited Versus Ispat Khadan Janta Mazdoor Union**, held that the principal employer is under no legal obligation by operation of law to absorb contract labour working in the department. Non-compliance or violation or breach of provisions of CLRA Act would entail only penal and no other consequences.

26. Accordingly, issue No.1 is decided against the workman and in favour of the managements and issue No.2 is decided in favour of management No.1 & 3 and against the workman.

Relief :—

27. In the light of findings on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.). . .,

The 26th July, 2022.

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 30th August, 2022

No. 13/1/9889-HII(2)-2022/12759.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 49/2017 dated 26.07.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RAFI HAIDER S/O SHRI SAZID ALI, R/O VILLAGE HOUSE NO. 3383, MALOYA COLONY,
UNION TERRITORY, CHANDIGARH (Workman)

AND

1. DIRECTOR, SPORTS DEPARTMENT, UT, HOCKEY STADIUM, SECTOR 42, CHANDIGAH
2. GUARDIAN SECURITY AND PLACEMENT SERVICES, THROUGH ITS AUTHORISED SIGNATORY, SCO NO. 114, FIRST FLOOR, SECTOR 47C, CHANDIGARH.
3. SECURE GUARD, INDUSTRIAL PLOT NO. 51, INDUSTRIAL AREA, PHASE - II, CHANDIGARH THROUGH ITS AUTHORISED REPRESENTATIVE. (Management)

AWARD

1. In the industrial dispute received in this Tribunal / Court under Section 2-A(2) of the Industrial Disputes Act, 1947 as amended Act, 2010 (*hereinafter in short called 'ID Act'*) filed by the workman, it is submitted that the workman was appointed by management No.1 as Security Guard on 05.03.2012 and remained as Security Guard with the management till 20.06.2017, he was paid on DC rates and his last pay was ₹17,690/- per month, after deducting PF and ESI, he was paid net ₹15,257/- per month. The workman has not been paid increased DC rates from April 2017 to June, 2017 for which the separate application / petition under payment of wages Act is being filed. The services of the workman were terminated on the illegal recommendations of concerned Manager of management No.1 *vide* verbal order with effect from 20.06.2017. Fresh persons in place of workman has been appointed and no principle of 'first come last go' has been adopted by the managements. Hence, the termination is illegal and against the provisions of the ID Act. Junior to the workman has been retained in service whereas the services of the workman has been illegally terminated *vide* verbal order on 20.06.2017. The managements have violated the provisions of Section 25-G, 25-H & 25-F of the ID Act and the services of the workman has been terminated without following the above provisions of the ID Act. Before illegally terminating the services of the workman, no notice, charge sheet has ever been served upon him and no inquiry has been conducted against the workman. Hence, the action of terminating the services *vide* verbal order is illegal and against the law. The Union of Sports Department, U.T. Chandigarh including employees of contractor has served a demand notice upon the managements. The managements instead of considering the demands of the union has illegally terminated the services of the workman on 20.06.2017. After illegal termination of the services of workman, *vide* verbal order dated 20.06.2017 the workman served a legal demand notice under Section 2-A of the ID Act upon the managements and

the Conciliation Officer-cum-Assistant Labour Commissioner, U.T. Chandigarh conducting conciliation proceedings. On 11.07.2017 it was held by Assistant Labour Commissioner, U.T. Chandigarh that no amicable settlement could be made possible within stipulated period for conciliation of disputes and thus the conciliation proceedings stands closed at his level and advised the party concerned to take action as per Section 2-A of the ID Act as deemed fit. Hence, this claim. The workman is not gainfully employed anywhere from the date of illegal termination of services i.e. 20.06.2017 till date. The workman visited many times to the managements for his reinstatement of service but all in vain. The managements had adopted wrong procedure to remove old workmen and at their place appointed fresh workmen to deprive old workmen from their legal right. The similar procedure has been adopted in case of the workman. The management has not conducted inquiry or served notice or paid compensation in lieu of notice to the workman, hence, the management has violated the provisions of Section 25-F, 25-G & 25-H of the ID Act. Due to illegal termination order, the family of the workman has badly disturbed financially and mentally. The workman had completed more than 240 days continuously in a year so termination order is illegal. Neither the principal employer i.e. management No.1 is registered with the Labour Department for outsourcing the services of Security Guard nor the contractor-management No. 2 has obtained license for engaging the outsource labour from the Labour Department, Union Territory Chandigarh, hence, action of termination of services of the workman is illegal and against the provisions of the ID Act and provisions of Abolition of Contract Labour Act. The cause of action accrued to the workman on 20.06.2017 when his services were verbally terminated and thereafter on 11.07.2017 when the conciliation proceedings were closed by the Assistant Labour Commissioner and intimated to the workman vide Memo No.4001 dated 17.07.2017 regarding closing of conciliation proceedings. The cause of action is still continuing one.

2. No such or similar proceedings are pending before any court of law, except the present one. Prayer is made that the workman may be reinstated into service with continuity in service and full back wages and all other consequential benefits from time to time.

3. On notice, management No.1 appeared through Law Officer and contested the case of the workman by filing written statement on 29.01.2018 wherein it is stated that the services of management No. 2 were hired by the answering management No.1 for providing manpower. The workman was engaged by management No. 2 and not by management No.1 as alleged in the statement of claim. It was management No. 2 who appointed the workman and deputed in the office of answering management. As regards payment of wages as revised DC rates for the period with effect from April 2017 to June 2017, the Sports Department had already paid ₹59,001/-. As per bill submitted by management No. 2 on account of revised wages to the workman in the month of August, 2017. In fact, the services of the management No. 2 were hired by the answering management and the said workman was engaged by the management No. 2 and not the management No. 1. The workman was replaced by the management No. 2 and the answering management / department has no concern with the termination of workman as alleged. The workman is employee of management No. 2 for all intents and purposes. The workman has been removed / replaced by management No. 2. It is the matter between the workman and the service provider and the answering management / department has no concern with the removal / replacement of the workman. The workman was deputed through outsource service provider i.e. management No. 2. The answering management has no relation with the workman as he is appointed through outsource. The workman has no relation with the answering management / department as his services were provided by the management No.2, to whom the contract for providing the manpower was awarded by the answering management. Therefore, the question does not arise of illegal termination, issue of notice, charge sheet and conducting of inquiry by the answering management against the workman. The services of workman

were replaced by the management No. 2. The answering management is not responsible for the removal of the workman as he was not employee of the answering management. The answering management / department is registered with the Labour Department under the Contract Labour Act, 1970. The present service provider has also obtained the labour license from the labour department. It is stated that the facts relating to termination of services of the workman *vide* verbal order dated 20.06.2017, issue of legal demand notice under Section 2-A of the ID Act upon the managements and the conciliation officer-cum-Assistant Labour Commissioner, U.T. Chandigarh, conducting of conciliation proceedings by the Assistant Labour Commissioner, U.T. Chandigarh and further the fact the conciliation proceedings stand closed are matter of record. Rest of the contents of the statement of claim are denied as wrong except para 15 which is denied for want of knowledge and prayer is made that the claim petition may be dismissed against the answering management.

4. Upon notice, management No. 2 appeared through its representative Shri D. P. Sharma. Management No. 2 contested the claim petition by filing separate written statement dated 21.12.2017, wherein preliminary objections were taken up on the grounds that the services of the workman have never been terminated, as alleged. The factual position remains that the concerned workman was found sleeping while on duty on 20.06.2017, for which he admitted his fault and assured not to repeat similar action of omission in future and also requested to be excused. He was advised to visit office of the management in Sector 47-C, Chandigarh on 21.06.2017 for counselling etc. The workman visited office and submitted the apology letter but he did not report for duty in the establishment of management No.1 on 21.06.2017 and absenting himself from duty without any intimation since 21.06.2017. On 21.06.2017, when he visited the office, he was advised to visit office again on 23.06.2017 for issuing him fresh deployment order with one of our other clients but he did not visit our office as advised on 23.06.2017. Hence, the allegation of termination is wrong, false and baseless. The present reference and claim statement is bad in law, thus, not maintainable. The same deserves to be dismissed.

5. Further, on merits, it is admitted as correct that the workman was appointed as Security Guard and remained as Security Guard with management No.1 till 20.06.2017. The workman was paid DC rates and his last pay was ₹17,690/- per month, after deducting PF and ESI, he was paid net ₹15,257/- per month. It is stated that the answering management No. 2 is engaged in the business of outsourcing manpower to various clients i.e. private and Government establishments situated in the Union Territory Chandigarh and in the State of Punjab. Management No.1 i.e. Director Sports Department, U.T. Chandigarh is one of such clients. The contract labour so supplied by them in the Government establishments gets wages as per the DC rates and in the private establishments the contract labour gets wages as notified by the appropriate Government / Labour Department of the concerned state under the Minimum Wages Act, 1948. In the present case the management No.1 is the principal employer and the answering management No. 2 is the contractor. The workman concerned was deployed to work as Security Guard by the answering management No. 2 with the management No.1. The management No.1 being a Government department is covered by the DC rates payable to the contract labour. The revised DC rates with effect from April 2017 were to be implemented by the management No.1 and thereafter the same were to be released to the answering management No. 2. The revised DC rates have now been paid to the workman against the claim application under the Payment of Wages Act. It is denied that the services of the workman were terminated *vide* verbal order with effect from 20.06.2017. In fact, the workman himself stopped attending to his duty with effect from 21.06.2017 without any intimation. The workman had to visit their office on 23.06.2017 but neither he visited their office nor reported for duty. He was working as a Security Guard. Due to his sudden unauthorised absence, his duty was to be performed by someone else. Therefore, there was no other option left with them but to depute other staff

in place of the workman. In any case, if the concerned workman is still ready to work with them, he should be directed to visit their office in Sector 47-C, Chandigarh immediately so that he can be deputed to work with one of their other client having establishment in Chandigarh or Mohali. These clients are governed by the Minimum Wages Act, 1948 and the contract labour deployed by the answering management No. 2 with them are paid minimum rates of wages notified by the appropriate Government / Labour Department from time to time. Section 25-F, 25-G & 25-H of the ID Act are not attracted in the present case. Since the workman himself remained away from the work, no charge sheet was required to be issued nor any inquiry was required to be conducted. The management No.1 being the principal employer and the management No. 2 being the contractor for the management No.1 are duly registered under the Contract Labour (Regulation & Abolition) Act, 1970 (*hereinafter in short called as 'CLRA Act'*). The workman has no cause of action. Rest of the contents of the statement of claim are denied as wrong. Additional submission is made to the effect that if the workman so desires he can visit their office in Sector 47-C, Chandigarh immediately so that he could be deployed as Security Guard with one of their other clients having establishment in Chandigarh or at Mohali. These private establishments are not covered by the DC rates but are governed by the notification issued by the State Government under the Minimum Wages Act, 1948. Prayer is made that the reference may be declined with cost.

6. On notice, management No. 3 appeared through representative Shri R. L. Manchanda and contested the statement of claim by filing written statement on dated 05.01.2021 wherein preliminary objections are raised on the grounds that the workman had served demand notices under Section 2-A of the ID Act to the managements No.1 & 2 because he had master servant relation with the said parties. The workman had no employee-employer relations with the management No.3, hence, no dispute can be made *qua* M/s Secure Guard Security & Manpower Services. The managements No.1 & 2 have contested the demand notice before he Assistant Labour Commissioner, Chandigarh and no compromise / conciliation have been arrived, then the appropriate Government had referred the matter for adjudication to this Hon'ble Court. During the stage of evidence of the parties, the workman has wrongly impleaded the answering management as party to the dispute. The managements No.1 & 2 could not have given their respective consents to midway implead the management No. 3 in the present industrial dispute when the workman for no stretch of imagination had ever maintained master-servant relation with the management No. 3. Hence, the present claim of workman has no bearing *qua* management No. 3 and the same needs to be dismissed with cost.

7. Further on merits, similar stand is taken as taken in the preliminary objection. It is stated that averments made in para 1 to 14 of the statement of claim does not pertain to the answering management No. 3 hence, needs no reply. Prayer is made that the involvement / identity of management No. 3 in the present industrial dispute reference may be dropped at the outset with heavy costs, in the interest of natural justice, equity and fair play.

8. The workman filed separate replications to the written statement of management No.1 to 3 wherein the contents of written statements are denied as wrong except admitted facts of the claim statement and averments of the claim statement are reiterated. In the replication to the written statement of management No. 2, additional plea is taken that written statement is neither verified nor supported by any affidavit. Even no resolution of the company in favour of the authorised signatory has been attached with the written statement, therefore, the same cannot be read as defence on behalf of management No.2 and the defence of management No. 2 may be struck off on this ground.

9. From the pleadings of the parties, following issues were framed by vide order 26.02.2018 :—

1. Whether there is no employer-employee relationship between management No.1 and workman ? OPM-1
2. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
3. Relief.

10. *Vide* order dated 25.02.2020 M/s Secure Guard was impleaded as management No.3. After taking written statement from management No.3 and replication to the written statement of management No.3, vide order dated 17.02.2021 issues were reframed as below :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether there is no employer-employee relationship between management No.1 & 3 and workman ? OPM-1 & 3
3. Relief.

11. In evidence the workman Rafi Haider examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents i.e. photocopy of his identity card bearing date of issue 13.08.2012, issued by Gretis India Private Limited vide Exhibit 'W1'; photocopy of his aadhaar card vide Exhibit 'W2'; photocopy of his identity card bearing date of 09.05.2016, issued by Guardian Security vide Exhibit 'W3'; photocopy of his passbook of saving bank account with State Bank of India, Sector 30, Chandigarh vide Exhibit 'W4' and photocopy of the certificate dated 25.08.2011 relating to Rafi Haider regarding completion of prescribed training for the engagement or employment as a Private Security Supervisor / Guard for the period from 01.08.2011 to 21.08.2011 issued by Young Men's Christian Association Chandigarh (YMCA) vide Exhibit 'W5'. On 15.07.2021 learned representative for the workman tendered into evidence photocopy of letter bearing Memo No.DS-UT-Estt.-2021/2078 dated 01.04.2021 on the subject of withdrawal of court cases addressed from Superintendent (D), Director Sports, Chandigarh Administration to Shri Rajesh Kumar - Ex-Security Guard and Shri Rafi Haider - Ex-Security Guard (workman) vide Exhibit 'W6' and closed evidence of the workman.

12. On the other hand, managements examined MW1 Arun Kumar, Clerk, office of the Assistant Labour Commissioner, Union Territory Chandigarh and tendered documents i.e. the copy of demand notice dated 27.06.2017 issued by Rafi Haider to the Director Sports Department, U.T., Hockey Stadium, Sector 42, Chandigarh and Guardian Security & Placement Services through its authorised signatory, Sector 47-C, Chandigarh relating to subject of demand notice against illegal termination order dated 21.06.2017 of Rafi Haider, Security Guard vide Exhibit 'M1'; copy of proceedings dated 11.07.2017 in ID No.120/2017 vide Exhibit 'M2'; copy of proceedings dated 11.07.2017 in ID No.118/2017 vide Exhibit 'M3'; copy of proceedings dated 11.07.2017 in ID No.119/2017 vide Exhibit 'M4' and a copy of failure report dated 17.07.2017 of Assistant Labour Commissioner-cum-Conciliation Officer relating to demand notice of Rafi Haider vide Exhibit 'M5'.

13. Managements further examined MW2 Krishan Lal - Senior Judo Coach, Sports Department, Sector 42, Chandigarh Administration, who tendered his affidavit Exhibit 'MW2/A' along with authority letter dated 01.01.2021 issued in his favour by the Director Sports, Chandigarh Administration, authorising him to attend the court on 05.01.2021 to submit affidavit on behalf of the Sports Department, U.T. Chandigarh for evidence / witness vide Exhibit 'MW2/1'. Managements examined MW3 H. S. Chahal - Managing Director, Guardian Security & Placement Service, Sector 47-C, Chandigarh, who tendered his affidavit Exhibit 'MW3/A'

along with photocopy of letter bearing Memo No.CL/2019/933 dated 12.02.2019 relating to the subject of renewal of contract labour license for the year 2019 addressed from Licensing Officer (under the Contract Labour (R&A) Act) UT Chandigarh to M/s Guardian Security & Placement Services, Sector 47-C, Chandigarh vide which their license bearing No.CL/UT/CHD/715 dated 03.08.2017 renewed up to 31.12.2019 was sent accompanied with photocopy of license No. CL/UT/CHD/715 dated 03.08.2017 granted to M/s Guardian Security & Placement Service, Sector 47-C, Chandigarh for the period up to 31.12.2017 bearing endorsement made by Licensing Officer (Contract Labour, U.T. Chandigarh) of renewal from 01.01.2018 to 31.12.2018 and then from 01.01.2019 to 31.12.2019 *vide* Exhibit 'MW3/1'.

14. The managements examined MW4 R. L. Manchanda - Manager (Legal), Secure Guard Security & Manpower Service, plot No.151, Phase - II, Industrial Area, Chandigarh who tendered his affidavit Exhibit 'MW4/A' along with photocopy of letter bearing Memo No.DS-UT/Estt.-2021/3581 dated 21.06.2021 relating to the subject of extension for award of contract for providing of security and allied staff services on outsource basis addressed from the Assistant Controller (F&A), Director Sports, Chandigarh Administration to M/s Security Guard Security & Manpower Services, 151, Industrial Area, Phase - II, Chandigarh *vide* Exhibit 'MW4/1'. In cross-examination of MW3 H. S. Chahal, learned representative for the workman brought into evidence the document i.e. apology letter of Rafi Haider dated 21.06.2017 Exhibit 'MX1'. On 02.03.2022 Law Officer for the management No.1 closed the evidence on behalf of management No. 1. On 02.09.2021 representative for management No.2 closed the evidence on behalf of management No. 2. On 02.09.2021 representative for management No.3 closed the evidence of management No.3.

15. I have heard arguments of learned representatives for the parties and Law Officer for management No.1 and perused the judicial file. My issue-wise findings on the issues reframed *vide* order dated 17.02.2021 are as below :—

Issue No. 1 & 2 :—

16. Onus to prove issue No.1 is on the workman and onus to prove issue No. 2 is on management No. 1 & 3. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

17. To prove its claim, the workman Rafi Haider examined himself as AW1 and *vide* his affidavit Exhibit 'AW1/A' deposed the averments of claim in toto. AW1 supported his oral version with documents Exhibit 'W1' to 'W5'. For further corroboration learned representative for the workman referred document Exhibit 'W6'.

18. On the other hand, learned Law Officer for management No.1 referred the testimony of MW2 Krishan Lal *vide* his affidavit Exhibit 'MW2/A' deposed that he is working as Senior Judo Coach in the Sports Department, Chandigarh Administration and authorised to appear on this Hon'ble Court to give evidence *vide* authority letter Exhibit 'MW2/1'. MW2 deposed that the services of management No. 2 were hired by the answering management for providing manpower and the said workmen was engaged by management No. 2, who appointed the workmen and deputed in the office of answering management. The workman was replaced by the management No. 2 and the Sports Department has no concern with the termination of workman as the workman is employee of management No.2 for all intents and purposes. Therefore, it is a matter between the workman and the services provider, as such the Sports Departments has no concern with the removal / replacement of the workman. The workman was deputed through outsource service provider i.e. management No. 2. The answering management has no relation with the workman as he is appointed through outsource i.e. management No. 2, to whom contract for providing manpower was awarded by the answering management.

Therefore, question does not arise of illegal termination, issue of notice, charge sheet and conducting of inquiry by the answering management against the workman. As regards payment of wages as per revised DC rate, for the period from April 2017 to June 2017, the Sports Department has already paid ₹59,001/- as per bill submitted by management No.2 on account of revised wages to the workmen in the month of August 2017. MW2 further deposed that the Sports Department is registered with the Labour Department under the CLRA Act. The present service provider has also obtained the labour license from the Labour Department. The workman is not entitled for any relief claimed by him in his present claim.

19. Learned representative for management No. 2 referred the testimony of MW1 Arun Kumar, Clerk, Office of Labour Commissioner, U.T. Chandigarh, who deposed that he is a summoned witness and has brought the summoned record pertaining to reference under Section 2-A of the ID Act with regard to workman Rafi Haider. MW1 proved on record Exhibit 'M1' to 'M5'.

20. Learned representative for management No.2 further referred to the testimony of MW3 H. S. Chahal, Managing Director, Guardian Security & Placement Services, Sector 47-C, Chandigarh who *vide* his affidavit Exhibit 'MW3/A' deposed that he is conversant with the facts of the present case. Their contract with the management No.1 has already ended up and terminated with effect from 16.03.2019 *vide* contract of termination letter dated 08.03.2019 by management No.1, copy of which is Mark 'MX2/1'. Written comments to the demand notice of the workman were filed before the Conciliation Officer and through additional submissions the workman was given the offer of deployment as security Guard with one of their other client in Chandigarh or at Mohali but the workman had declined the offer. Similar offer was made to the workman through the Assistant Labour Commissioner, Chandigarh, and the same was declined by the workman which can be seen from the conciliation proceedings dated 30.06.2017 Exhibit 'M4'. Similar offer was given to the workman in the written statement filed in response to his statement of claim, which offer was also declined. During cross-examination the workman stated that he is not ready to work anywhere other than the management. MW3 further deposed that the workman was found sleeping on duty on 21.06.2017 and he admitted his fault *vide* writing dated 21.06.2017 Exhibit 'MX1'. The workman was advised to visit their office on 23.06.2017 for his fresh deployment with their other clients but neither he visited their office nor reported for duty and remained absent with effect from 23.06.2017. The workman in his cross-examination has stated that his services were terminated by management No. 1. Since the workman remained absent without intimation and other staff was deployed as the assignment of Security Guard cannot be left unattended. The workman himself remained absent and did not visit their office for fresh deployment, thus, no charge sheet or inquiry was necessitated. The management No.1 is the principal employer and the management No.2 was the contractor in respect of the workman. Management No. 2 was registered under the CLRA Act, copy of license is Exhibit 'MW1/1'. The contract of management No. 2 has already been terminated by management No.1 with effect from 16.03.2019, therefore the workman is not entitled to any relief whatsoever from management No. 2.

21. Learned representative for management No.3 referred testimony of MW4 R. L. Manchanda, who *vide* his Exhibit 'MW4/A' deposed that for the sake of brevity, the contents of his written statement may be read part and parcel of his affidavit. It is specifically deposed that presently the services contractor of the client is not with the agency of deponent as the same has come to an end with effect from 15.06.2021 and the workman has been allotted to some other service provider *vide* letter No. DS-UT-Esstt.-2021/3581 dated 21.06.2021 issued by the client. It is totally beyond the control of the agency of the deponent to make any submission, to extend any help to any of the contractually deployed staff with the then client of the defendant.

22. As far as relationship of employer-employee between management No.1 & 3 on one side and the workman other side is concerned, the workman in his cross-examination conducted by management No.1 has

stated that he was engaged by the contractor Gretis Security on 05.03.2012. Thereafter on 11.10.2013 he was appointed by the management No. 2 (Guardian Security). He has not made Gretis Security as party in the present reference. AW1 admitted as correct that his work & conduct was observed by the contractor then the workman was taken by the Sports Department i.e. management No. 1. AW1 when put to cross-examination by management No.2 stated that he was deputed to work as Security Guard in the office of management No.1 (Sports Department) by management No.2 (Guardian Security). It is pertinent to mention here that initially the workman filed statement of claim against management No.1 i.e. Director Sports Department, U.T., Hockey Stadium, Sector 42, Chandigarh and management No. 2 i.e. Guardian Security & Placement Services through its authorised signatory Sector 47-C, Chandigarh. On 20.12.2019 the workman filed an application to implead M/s Secure Guard as management No.3. On 04.02.2020 learned representative for management No.2 by making endorsement on the application pleaded no objection if the application for impleading M/s Secure Guard is allowed. On 25.02.2020 learned Law Officer for management No.1 pleaded no objection if the application for impleading M/s Secure Guard, Industrial Plot No. 151, Industrial Area, Phase II, Chandigarh as management No.3 is allowed. *Vide* order dated 25.02.2020 M/s Secure Guard, Industrial Plot No.151, Industrial Area, Phase II, Chandigarh was ordered to be impleaded as management No.3. On 25.02.2020 amended title was filed. AW1 in his cross-examination conducted by management No. 2 admitted as correct that he was appointed by management No. 2 on 11.12.2011 and deployed to work with management No.1 as a Security Guard and he was getting his monthly wages directly from management No. 2 (Guardian Security). AW1 stated that he was covered under the EPF and ESI and the same was deducted every month from his wages by management No. 2. AW1 admitted as correct that management No.1 was the principal employer and the management No. 2 was the contractor. From the aforesaid of version of AW1 it is duly established on record that the workman was appointed on 11.12.2011 by the contractor Guardian Security & Placement Services i.e. management No. 2. Above all the workman did not bring into evidence any appointment letter issued in his favour by the management No.1 i.e. Director Sports Department, U.T.

23. It is vehemently argued by the learned representative for the workman that neither principal employer i.e. management No.1 is registered with the Labour Department for outsourcing the service nor the contractor management No.2 had obtained license for engaging the outsource labour from the Labour Department, U.T. Chandigarh. During evidence the management No.1 did not prove its registration under Section 7 of the CLRA Act and the management No.1 also did not prove that the contractor i.e. management No. 2 has obtained license under Section 12 of the CLRA Act. Therefore, the persons employed by the principal employer through contractor would become the employees of the principal employer. In this manner, the workman is employee of principal employer i.e. management No. 1. On the other hand, representative for management No.1 has argued that it is registered under Section 7 of the CLRA Act and the management No.2 has also obtained license under Section 12 of the CLRA Act. To support his arguments learned Law Officer for management No.1 referred Exhibit 'MW4/1' i.e. letter bearing Memo No.DS-UT/Estt.-2021/3581 dated 21.06.2021 relating to the subject of extension for award of contract for providing of security and allied staff services on outsource basis addressed from the Assistant Controller (F&A), Director Sports, Chandigarh Administration to M/s Secure Guard Security & Manpower Services, 151, Industrial Area, Phase - II, Chandigarh. Learned representative for management No. 2 argued that management No.2 has obtained the requisite license of contract labour. To support his arguments learned representative for management No.2 referred Exhibit 'MW3/1' i.e. photocopy of letter bearing Memo No.CL/2019/933 dated 12.02.2019 relating to the subject of renewal of contract labour license for the year 2019 addressed from Licensing Officer (under the Contract Labour (R&A) Act) UT Chandigarh to M/s Guardian Security & Placement Services, Sector 47-C, Chandigarh vide which their license bearing No.CL/UT/CHD/715 dated 03.08.2017 renewed up to 31.12.2019

was sent accompanied with photocopy of license No. CL/UT/CHD/715 dated 03.08.2017 granted to M/s Guardian Security & Placement Service, Sector 47-C, Chandigarh for the period up to 31.12.2017 bearing endorsement made by Licensing Officer (Contract Labour, U.T. Chandigarh) of renewal from 01.01.2018 to 31.12.2018 and then from 01.01.2019 to 31.12.2019. To my opinion, in the present case the relevant date when the services of the workman were engaged by the contractor / management No. 2 for Sports Department / management No.1 is 10.12.2013. The letter Exhibit 'MW4/1' relates to the period of contract of management No.1 with management No.2 for the period from 20.05.2021 to 14.06.2021. *Vide* letter Exhibit 'MW4/1' the contract of management No.1 with management No.2 was terminated with effect from 14.06.2021 (AN). In this manner management No.1 & 2 did not prove into evidence its valid registration and license on the relevant date i.e. 10.12.2013. Therefore, the management No.1 and management No.2 have violated the provisions of Section 7 & 12 of the CLRA Act for the period with effect from the relevant date i.e. 10.12.2013 to 02.08.2017. The license of management No.2 from 03.08.2017 to 31.12.2019 stands proved from Exhibit 'MW3/1'. As per the judgment of **Hon'ble Supreme Court in Dina Nath Versus National Fertilizers Limited, Civil Appeal No.2355 of 1991 decided on 22.11.1991**, for violating Section 7 & 12 of the CLRA Act, the principal employer (herein management No.1) and the contractor (herein management No.2) are only liable for prosecution of Section 23 of the CLRA Act and on account of violation of Section 7 & 12 of the CLRA Act, the workman employed by the principal employer through contractor would not become the employee of the principal employer. Therefore, relationship of employer and employee between the management No.1 and the workman not proved. However, the workman is proved employee of the contractor / management No.2. As far as management No.3 i.e. M/s Secure Guard is concerned it was engaged as a contractor by the management No.1 subsequent to 16.05.2017 which the alleged date of termination of the workman. Management No.3 never engaged the workman for deployment as outsource employee with the Sports Department / management No.1 or any other department. Moreover, as per the testimony of MW4 R. L. Manchanda the contract of management No.3 with management No.1 came to end on 14.06.2021. Thus, there is no relationship of employer & employee between the management No.3 and the workman.

24. As far as the termination of the services of the workman is concerned, the workman has alleged that he was terminated by the department on 20.06.2017 and he has not been given any written termination letter. To my opinion as discussed above, there is no relationship of employer and employee between management No.1 & workman, thus the question of termination of the services of the workman by the management No.1 does not arise. Besides, the workman was never appointed by the Sports Department / management No.1. Learned representative for management No. 2 has taken the plea that the workman stopped reporting for duty suddenly with effect from 23.06.2017, therefore, management No.2 had to depute another Security Guard in his place, keeping in view the nature of duty. Moreover, the workman was given offer to report for duty if he is interested to work with the other clients of management No.2 as a Security Guard, to which the workman refused. The workman was again offered to work with other client of management No. 2 as Security Guard during the conciliation proceedings and the offer was declined by the workman. The aforesaid plea of the management No.2 stands proved from the conciliation proceedings Exhibit 'M2' which finds reference of aforesaid offer from management No. 2 and the same was declined by the workman. In para No.3 on merits of the written statement of management No. 2, similar offer is given to the workman. In replication to the written statement of management No. 2, it is stated that no offer was given to perform duty with management No.1 as a Security Guard. In cross-examination similar offer was again given to the workman / AW1 to which AW1 replied that he is not ready to work with any client of management No.2 except Sports Department because it would be far away from his house and he might not be able to meet his family expenses. The aforesaid facts & circumstances coupled with the above said version of AW1 would prove that the workman

has declined the offer of management No. 2 for deputing the workman to work with one of the other client of management No.2 having establishment in Chandigarh or in Mohali. Consequently, on account of refusal to join duty as Security Guard with some other client of the management No. 2 in Chandigarh or at Mohali, the workman is not entitled to reinstatement with continuity of service or back wages or to compensation or any retrenchment benefits. Moreover, the contract of management No. 2 with management No.1 has already came to end on 31.12.2019. As per the law laid down by **Hon'ble Supreme Court of India in Civil Appeal Nos.8081-8082 of 2011 decided on 05.07.2019 titled as Director Steel Authority of India Limited Versus Ispat Khadan Janta Mazdoor Union**, held that the principal employer is under no legal obligation by operation of law to absorb contract labour working in the department. Non-compliance or violation or breach of provisions of CLRA Act would entail only penal and no other consequences.

25. AW1 when put to cross-examination by management No.2 denied the suggestion as wrong that on 20.06.2017 he was found sleeping. AW1 admitted as correct that he visited the office of management No. 2 in Sector 47, Chandigarh on 21.06.2017. Volunteered, he was called by management No. 2 when his services were terminated by the management No.1. On 21.06.2017 he was forced to sign a writing. He has seen the original which bears his signature and the same in original is Exhibit 'MX/1'. AW1 denied the suggestion as wrong that he was not forced to sign Exhibit 'MX/1'. AW1 denied the suggestion as wrong that he has signed this writing of his own and with his free will. To my opinion, the aforesaid version of AW1 would suggest that AW1 has admitted his signatures on Exhibit 'MX/1'. The plea taken by AW1 / workman that he was forced to sign letter Exhibit 'MX/1' is not acceptable because in the demand notice and in the statement of claim the workman did not plead that any official of management No. 2 ever forcibly obtained his signature on any writing. No evidence is forthcoming that the workman has complained to any competent authority for allegedly obtaining his signature over any writing by use of force. AW1 / workman has taken the plea of obtaining his signatures forcibly on writing, in order to deny his liability arising from document Exhibit 'MX/1'. In Exhibit 'MX/1' the workman has tendered his apology that on 21.06.2017 he suffered from sudden headache. He informed the Guard at the main gate to look after for one hour. He fell asleep from 4:20 A.M. to 4:40 A.M. He will not repeat this mistake in future. From the aforesaid version of AW1, the workman is proved guilty of misconduct.

26. Accordingly, issue No.1 is decided against the workman and in favour of the managements and issue No.2 is decided in favour of management No.1 & 3 and against the workman.

Relief :—

27. In the light of findings on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.). . .,

The 26th July, 2022.

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 30th August, 2022

No. 13/1/9886-HII(2)-2022/12761.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 62/2021 dated 28.07.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

AMANDEEP SINGH S/O SHRI TEJWANT SINGH, AGED 40 YEARS, R/O HOUSE NO. 1136, SECTOR-7, MOHALI - 160071. (Workman)

AND

TAPASH CHAUHAN (HR HEAD), NETIZEN ENGINEERING PRIVATE LIMITED, RELIANCE CENTRE, GROUND FLOOR, WING-B, MAHARAJA RANJIT SINGH MARG, NEW DELHI-110012. (Management)

AWARD

1. Amandeep Singh, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the workman was selected by the respondent-management as a Customer Service Officer (CSO) at Chandigarh through positive mode of selection on 01.09.2007 on contract basis and appointment letter was issued to him. The contract was with effect from 01.09.2007 to 30.08.2008. Accordingly, he joined the management as CSO. His initial pay was fixed ₹ 7,250/-. The contract of the workman was extended by the management from time to time without any break. The workman continuously worked with the management on such post without any break to the entire satisfaction of the management and nothing adverse was ever communicated to him. The workman received email dated 18.06.2020 from the office of management wherein it has been stated that since the performance of the workman is very low, therefore, his services will come to an end with effect from 20.06.2020, despite the fact that the workman was performing his duties diligently and sincerely. Shri Amity Prashar, Senior Officer / Manager of the management vide email dated 18.06.2020 stated that the workman has been working under his supervision and he has been performing his duties up to mark and there is no low performance on his part and repeatedly requested the management to review the termination order but all in vague. No action was taken by the management and the services of the workman were terminated with effect from 20.06.2020 without any show cause notice or hearing and without following the mandatory provisions of the ID Act. No retrenchment notice or compensation was given to the workman prior to his termination. The workman also submitted that number of representations and requests through email seeking reinstatement but no heed was paid to his request. The termination order is based upon the fact that the workman has low performance, despite the fact that the workman had performed his duties up to mark and there is no lapse on his part. Therefore, the termination order deserves to be set aside. No charge sheet or show cause notice was issued by the management while passing the termination which is against the principles of natural justice. Once the Senior Officer of the workman took categorical stand that the work of the workman is up to mark, therefore, the question of low performance does not arise. The management had failed to consider the same while

terminating the services of the workman. Without considering the factual aspects and evidence the management had issued termination order on the basis of conjecture and surmises. Therefore, the action of the management is illegal and arbitrary. Termination of the workman is predetermined and has been issued in a biased manner. No charge sheet or inquiry was ever held by the management while terminating the services of the workman. Thus, the management had failed to follow the settled procedure. The management has violated the Section 25-F of the ID Act. On earlier occasion, during lock down the management harassed the workman by alleging false allegation against him but the same were dropped by the management as his performance was up to the mark and the same has already been recognised by the senior officer. The present oral termination of the workman is counterblast. The workman has completed 240 days in a calendar year, prior to his termination therefore, the management was required to follow the procedure while passing the termination order. The workman was working at Chandigarh and his services have been terminated while working at Chandigarh, therefore, the jurisdiction lies with this Tribunal. The workman filed demand notice but no conciliation proceedings took place and accordingly, the certificate dated 21.10.2020. Thus, prayer is made that the claim statement of the workman may be accepted. The workman may be reinstated into service with effect from 20.06.2020 with all consequential benefits i.e. arrears of pay, allowance, continuity of service and seniority etc. The management may be directed to release the salary of the workman for the month of June 2020.

3. Notice was issued to the management for 03.08.2021, under registered cover (RC) *vide* postal receipt dated 23.06.2021. The RC was not received back undelivered, although time period of 30 days elapsed from the date of issuance of RC. Thus, deemed service of the management was affected. None appeared on behalf of the management. Thus, *vide* order dated 03.08.2021 the management was proceeded against *ex parte*.

4. In *ex parte* evidence, the workman Amandeep Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents i.e. copy of letter of appointment for a fixed tenure, issued on 01.07.2008 by Reliance HR Services Private Limited *vide* Exhibit 'W1'; copy of order of termination dated 18.06.2020 from Netizen Engineering Private Limited to Amandeep Singh on the subject of short closure of fixed tenure employment *vide* Exhibit 'W2'; copy of failure report bearing Memo No.4054 dated 21.10.2020 relating to the subject of demand notice, issued by Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh to Amandeep Singh *vide* Exhibit 'W3' and hard copy of emails dated 18.06.2020, 19.06.2020, 02.07.2020, 03.07.2020 *vide* Exhibit 'W4' (the documents tendered with affidavit Exhibit 'AW1/A' are incorrectly numbered from Exhibit 'W2' to 'W5', thus in order to avoid any ambiguity, the said documents are correctly re-numbered from Exhibit 'W1' to 'W4').

5. The workman examined AW2 Amit Parashar - Manager of the management's company Netizen Engineering Private Limited, who tendered his affidavit Exhibit 'AW2/A'. On 09.02.2022 learned representative for the workman closed *ex parte* evidence.

6. I have heard arguments of learned representative for the workman and perused the judicial file.

7. In order to prove its case, the workman Amandeep Singh examined himself as his own witness as AW1 and *vide* his affidavit Exhibit 'AW1/A' deposed the averments of statement of claim in toto and supported his oral version with documents Exhibit 'W1' to 'W4'. For corroboration the workman has examined AW2 Amit Parashar, who *vide* his affidavit Exhibit 'AW2/A' deposed that he had worked in the above said management company as a Manager and was a Senior Officer In-charge of the said workman Amandeep Singh, who was working under his supervision. The work & conduct of the workman Amandeep Singh was upto to

the mark and there has been no low performance on his part. He found the workman to be very sincere worker, fully devoted to his duties. To this effect he had written an email to the management on 18.06.2020.

8. From the oral as well documentary evidence led by the workman it is made out that on 01.07.2008 letter of appointment / Exhibit 'W1' for fixed tenure was issued by authorised signatory for Reliance HR Services Private Limited whereby on the basis of workman's application dated 01.07.2008 and his subsequent interview the workman was selected for the post of Customer Service Officer at Chandigarh for a fixed tenure from 01.07.2008 to 30.06.2009. As per Clause (1) of letter of appointment the appointment of the workman was to be effected from 01.07.2008 to 30.06.2009 with monthly salary of ₹6,474/-. The workman has alleged that he served with the management for about 12 years. During his tenure, his work & conduct remained up to mark and nothing adverse was ever communicated to him. But to his utter surprise he received email dated 18.06.2020 at 8:21 P.M. from the management whereby he was informed that his services from their company will come to an end on immediate basis with effect from 20.06.2020, after the close of office hours. The hard copy of the said email is Exhibit 'W4'. The letter dated 18.06.2020 whereby his services were terminated is Exhibit 'W2'. Learned representative for the workman argued that termination of the workman is illegal and in violation to the mandatory provisions of the ID Act. Neither charge sheet or show cause notice was issued by the management nor any inquiry was held before passing the termination order. Above all the termination order was passed on the ground that the workman has low performance, whereas as per the testimony of AW2 Amit Parashar, who was senior officer In-charge of the workman in his affidavit Exhibit 'AW2/A' categorically stated that he found the workman very sincere worker and fully devoted to his duties. Besides, on 18.06.2020 he has written email (same is part of Exhibit 'W4') to the management, which is reproduced as below :—

"May I know on which measure we are trying to know the performance of Mr. Aman. AS per my observation there is no low performance I have reported to any HR person. Although I am his reporting manager none of you have discussed with me before taking such action. It,s second time happening to Aman without any reason. Can you plz. tell the name of superiors person who has asked to HR team to take such unnecessary action."

9. To my opinion the aforesaid argument of learned representative for the workman is devoid of merits because the letter of appointment Exhibit 'W1' incorporates the terms & conditions of the service in Clause (6)(e) it is mentioned as below :—

"(e) Your services will be liable to be terminated any time before the period mentioned in clause 1(a), by giving 15 days' prior notice in writing or salary (i.e. Basic + DA) in lieu thereof :

- (i) If your performance during the period of or during your employment with us is not found satisfactory.*
- (ii) If you are medically reported unfit.*
- (iii) During the period of service, referred to in clause 1(a) above, you may leave service of the company by giving 15 days notice."*

In the letter of termination dated 18.06.2020 / Exhibit 'W2' it is mentioned that the workman is working with them since 1st July, 2008 as Support Officer - Sales. The workman is informed that his services with their company will come to an end, with immediate effect from 20th June, 2020, after the close of office hours. He will be paid 15 days basic, in lieu of notice period, as per terms of his appointment. In the order of termination conveyed through email by the management on 18.06.2020 to the workman it is mentioned that as per the

warning letter already issued in regard to workman's low performance, as informed by his superior that there is no improvement in his performance, hence, the workman was informed that his services from their company will come to an end on immediate basis with effect from 20.06.2020 after the close of office hours. From the above mentioned, it is made out that there is a reference of warning previously issued to the workman with regard to the low performance reported by his superiors to the management and this fact has been endorsed by the workman in his email Exhibit 'W4' wherein it is written by him to the management that in great recession he was issued a warning letter on 20/5 which is totally unreasonable, discriminatory and issued with malicious intentions based on false reports by the time authority not known to him.

10. AW2 Amit Parashar in his affidavit Exhibit 'AW2/A' stated that he had worked with the management-company as a Manager and was a senior officer In-charge of the workman Amandeep Singh. AW2 did not mention the period for which he worked with the management. AW2 did not place on record any document in support of his version that he had worked as a Manager with the management.

11. Thus, order of termination Exhibit 'W2' is in accordance with the letter of appointment for the fixed tenure i.e. Exhibit 'W1' as in lieu of 15 days prior notice the workman has been ordered to be paid 15 days basic as per Clause 6(e) of appointment letter Exhibit 'W1'. It is not the plea of the workman that he has not been given pay in lieu of notice period of 15 days as per Clause 6(e) referred above.

12. The appointment of the workman with the management was for a fixed tenure initially from 01.07.2008 to 30.06.2009 with the stipulation that the said appointment shall automatically come to end on expiry of the aforesaid period, unless the same is extended in writing by the company. The workman did not bring into evidence any documents relating to extension of his tenure. The workman has not specified his service period curtailed on account of his termination. The workman was fully conscious of the terms & conditions incorporated in letter of appointment for fixed tenure / Exhibit 'W1'. The case law referred by learned representative for the workman reported in **(1994)27 Administrative Tribunals Cases 590 SC tilted as Krishan Lal Versus State of J & K** is well recognized by this Court but the ratio of the ruling is not applicable to the facts of the present case.

13. In view of the reasons recorded above, termination order under challenge does not suffer from any infirmity. Consequently, the workman has failed to prove that his termination is illegal. Accordingly, this present industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.). . .,

The 28th July, 2022.

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Secretary Labour,
Chandigarh Administration.

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